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VIA CERTIFIED MAIL

EPA Region 10
Office of the Regional Administrator

Curtis Robinhold
Executive Director
Port of Portland
7200 N.E. Airport Way
Portland, OR 97218

Re: Clean Water Act Notice of Intent to Sue/60-Day Notice Letter
Port of Portland Violations of Clean Water Act and Clean Water Act
Permits

Dear Executive Director Robinhold:

On behalf of the Monsanto Company, Pharmacia LLC, and Solutia, Inc. (collectively, the "Claimants"), we hereby provide notice of the Claimants' intent to sue the Port of Portland ("Port") for ongoing violations of the Federal Water Pollution Control Act (the "Clean Water Act" or "Act"), 33 U.S.C. §§ 1251 *et seq.*; the Municipal Separate Storm Sewer System (MS4) Discharge Permit (the "MS4 Permit");¹ Stormwater Discharge Permit No. 1200-C ("Construction General Permit");² NPDES Waste Discharge Permit No. 1200-Z ("Industrial General Permit");³ NPDES Waste Discharge Permit No. 1200-COLS ("Columbia Slough Permit");⁴ and NPDES Waste Discharge Permit No. 107220 (the

¹ Ex. 1, Oregon Department of Environmental Quality, Municipal Separate Storm Sewer System (MS4) Discharge Permit No. 101314 (Jan. 31, 2011), <https://www.portlandoregon.gov/bes/article/507327>.

² Ex. 2, Oregon Department of Environmental Quality, Stormwater Discharge Permit No. 1200-C (Dec. 15, 2015), <http://www.deq.state.or.us/wq/wqpermit/docs/general/npdes1200c/permit.pdf>.

³ Ex. 3, Oregon Department of Environmental Quality, NPDES Waste Discharge Permit No. 1200-Z (July 1, 2012), <https://popcdn.azureedge.net/pdfs/StrmWtr-T2-1200-Z-Permit.pdf>.

⁴ Ex. 4, Oregon Department of Environmental Quality, NPDES Waste Discharge Permit No. 1200-COLS (Oct. 1, 2011), <https://popcdn.azureedge.net/pdfs/StrmWtr-PDX-1200-COLS-Permit.pdf>.

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“Deicing Permit”).⁵ This letter constitutes a Notice of Violation and Intent to File Suit (“Notice Letter”) against the Port under Section 505 of the Clean Water Act, 33 U.S.C. § 1365.

The Port discharges storm water and wastewater that contain a host of pollutants—including bacteria, metals, and toxic chemicals—that can degrade water quality in surrounding waterbodies. For example, the Oregon Department of Environmental Quality (“DEQ”) has identified waterbodies adjacent to Port properties as water-quality impaired for polychlorinated biphenyls (“PCBs”). The Port has discharged and continues to discharge PCBs into nearby water bodies at levels that are materially higher than the water quality criteria for PCBs under the Clean Water Act. Notable examples of these discharges include the following:

- The Port discharges PCB-laden storm water. The Port discharges large volumes of storm water—which is laden with pollutants—from its municipal separate storm sewer system (“MS4”) to nearby waterways. Storm water has been identified as one of the primary pathways of pollutants into contaminated sites, and the Port’s storm water contains many pollutants, including PCBs, at levels substantially higher than the water quality standards allow.
- The Port discharges PCBs during renovation and demolition of aging buildings, and fails to control the discharge of its lessees. When remodeling or demolishing aging buildings, the Port fails to implement best management practices (“BMPs”) that would prevent discharges of PCBs—even though this activity is a source of PCBs into waterways, and the United States Environmental Protection Agency (“EPA”) requires such BMPs in its federal Construction General Permit. Similarly, though the Port requires tenants to provide detailed information before beginning a construction project, the Port fails to require tenants to implement PCB-specific BMPs to prevent the mobilization and discharge of PCBs.
- The Port uses PCB-containing products and discharges them to waterways directly and through storm water. The Port uses products—including deicer and hydroseed—that are known to contain inadvertently generated PCBs at levels materially higher than water quality criteria allow. The Port discharges these products directly into nearby waterways, and applies them to roadways, construction sites, and other areas where they are discharged in storm water.

These discharges are causing and contributing to exceedances of water quality

⁵ Ex. 5, Oregon Department of Environmental Quality, NPDES Waste Discharge Permit No. 107220 (June 29, 2009), http://www.deq.state.or.us/wqpr/2744_A1005261006402925128.PDF.

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standards and objectives in receiving waters. Any violation of the MS4 Permit, the Construction General Permit, the Industrial General Permit, the Columbia Slough Permit, or the Deicing Permit constitutes a violation of the Clean Water Act, its regulations, and the Oregon Water Pollution Control Law and is grounds for an enforcement action. See 40 C.F.R. § 122.41(a).

Pursuant to Section 505 of the Clean Water Act, “any citizen may commence a civil action on his own behalf” against any governmental instrumentality that is “alleged to be in violation of (A) an effluent standard or limitation under [the Act] or (B) an order issued by the Administrator or a State with respect to such a standard or limitation.” 33 U.S.C. §§ 1365(a). The Clean Water Act confers jurisdiction to federal courts to enforce such standards, limitations, and orders, and to apply appropriate civil penalties under 33 U.S.C. §§ 1319(d) & 1365(a).

Section 505(b) of the Act, 33 U.S.C. § 1365(b), requires a citizen to give notice of the alleged violations and his or her intent to sue 60 days before initiating a civil action under Section 505(a) of the Act, 33 U.S.C. § 1365(a). The Port is formally placed on notice that following 60 days from the date of this Notice Letter, the Claimants intend to amend their counterclaims against the Port in the Action⁶ to include citizen enforcement claims under the Clean Water Act. Notice is also being given to the Chief Administrative Officer of the water pollution control agency (DEQ) for Oregon, the Administrator of the EPA, and the appropriate Regional Administrator of the EPA. 40 C.F.R. § 135.2(a).

I. FACTUAL BACKGROUND

A. Port’s Storm Water Discharges Include PCBs and Other Pollutants

For decades, the Port of Portland used the Willamette River as an “open sewer” and discharged or allowed tenants and others to discharge storm water, industrial process water from manufacturing and chemical plants, and raw, untreated sewage without treatment.⁷

The Port’s storm water discharges are laden with pollutants. As one example, the Port owns Swan Island Industrial Park (“Swan Island”).⁸ Swan Island has elevated levels of PCBs,

⁶ On January 4, 2017, the Port filed a lawsuit against the Claimants in United States District Court, District of Oregon, captioned *Port of Portland v. Monsanto Company, et al.*, Case No. 3:17-cv-00015-MO (the “Action”). The presence of PCBs that the Port has discharged into the State’s waterways in violation of the Clean Water Act and Clean Water Act permits is a substantial cause of the Port’s suit against the Claimants and also creates various forms of contingent liability for the Claimants. As a result, the Port’s violations of the Clean Water Act have injured and are injuring the Claimants—who have incurred costs substantially caused by the Port’s violations. Thus, the interests of the Claimants have been, are being, and will continue to be adversely affected by the Port’s failure to comply with the Clean Water Act.

⁷ Ex. 6, EPA, Portland Harbor RI/FS, Remedial Investigation Report, at 1-3 (Feb. 8, 2016) (“RI Report”), <https://semspub.epa.gov/work/10/1464370.pdf>.

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which are discharged into the storm water system. For example, at the Overland Unit 3 site on Swan Island, sampling of storm water solids showed levels of PCBs that significantly exceed Oregon's water quality standard.⁹ At this site, it was also determined that the majority of overland runoff is captured by the storm water conveyance system via various drains.¹⁰ Similarly, Swan Island Lagoon has elevated PCB concentrations, with most sediment concentrations in excess of 200 µg/kg (dry weight).¹¹

Elevated levels of PCBs were also recorded at Environmental Cleanup Site No. 5676 (McBride Slough), portions of which are owned by the Port.¹² McBride Slough functions as a drainage ditch to collect and convey Portland's storm water for flood control purposes, and this site receives storm water drainage from Port-owned properties.¹³

The Remedial Investigation and Feasibility Study ("RI/FS") for the Portland Harbor Superfund Site states that "[s]tormwater input is the most important current source pathway . . . for many contaminants, including PCBs . . ."¹⁴ A sampling study determined that discharges to the storm water system contained elevated concentrations of PCBs.¹⁵ In fact, sampling done as part of the study shows levels of PCBs in storm water at levels materially higher than Oregon's water quality standard. For example, samples of storm water from industrial sites showed PCBs dissolved in the water column ranging up to 52,000 picograms per liter (or ppq).¹⁶ Total PCBs in the storm water reached 11,600,000 picograms per liter.¹⁷ Similarly, the mean values of PCBs in the storm water, at 8,750 ppq (dissolved) and 352,000 ppq (total) substantially exceed Oregon's water quality standard.¹⁸

⁸ Port of Portland, Properties Portfolio Map, <https://www2.portofportland.com/Properties/PortfolioMap>.

⁹ Ex. 7, Oregon Department of Environmental Quality, Memorandum Re: Final Source Control Decision, Operable Unit 3-Swan Island Upland Facility, ECSI Site ID No. 271, at Table 3 (Apr. 4, 2013).

¹⁰ *Id.* at 5-6.

¹¹ Ex. 8, Letter from Lower Willamette Group to EPA, Attachment 1 at 12 (Nov. 4, 2005).

¹² Ex. 9, APEX, Feasibility Study: McBride Slough Sediment Cleanup, Figures 3, 6 (Feb. 23, 2015).

¹³ *Id.* at 1-2.

¹⁴ Ex. 6, RI Report, *supra* note 7, at ES-15.

¹⁵ Ex. 10, DEQ, 2015 Annual Report: Columbia Slough Sediment Program, at 4 (2015).

¹⁶ Ex. 11, EPA, RI Report, Appendix C, Stormwater Statistics and Groundwater Characterization, at 14 (Feb. 8, 2016), <http://semspub.epa.gov/src/document/10/1464374>.

¹⁷ *Id.*

¹⁸ *Id.*

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B. The Port's Discharge of PCBs Through Building Renovation and Demolition

Before 1979, when their commercial manufacture at concentrations above 50 parts per million ("ppm") was banned under the Toxic Substances Control Act ("TSCA"), PCBs were lawfully manufactured by a number of companies around the world. These PCBs were used in a variety of products, including electrical equipment, lamp ballasts, building materials, caulk, and paint. As the EPA has explained, buildings built or renovated from about 1950 to 1980 may have PCBs in building materials.¹⁹ As a result, the EPA found that "[w]ithout proper controls, the demolition of such structures can cause PCBs to be released into the environment and discharged into waters of the U.S. during storm events."²⁰

Because of this, in the federal Construction General Permit, the EPA found it necessary to require permittees who are demolishing structures with at least 10,000 square feet of floor space that were built before 1980 to implement BMPs if their construction storm water will discharge into PCB-impaired waterbodies.²¹ These BMPs can include measures like constructing containment and decontamination areas, sealing off vents during construction, covering scaffolding sides in plastic, and selecting tools that minimize dust and heat.²²

The Port of Portland is a significant property owner. The Port describes on its website that it owns properties including: Portland International Airport; West Hayden Island; Terminals 2, 4, 5, and 6—major shipping facilities and associated infrastructure; Troutdale Reynolds Industrial Park; Troutdale Airport; Gresham Vista Business Park; Rivergate Industrial District; Hillsboro Airport; and Swan Island Industrial Park.²³

Various portions of the Port's buildings were constructed or renovated between 1950 and 1980, which makes them particularly likely to contain building materials with high levels of PCBs that can be mobilized during renovation or demolition. This is particularly important, because the Portland International Airport is undergoing what the Port calls a "period of major redevelopment."²⁴

Despite this, the Port has no ordinance or policy that requires it to remove PCB-containing materials before demolition or take basic measures such as surveying older buildings for PCBs and implementing BMPs specific to PCBs before it renovates or demolishes buildings for its own projects. For example, the Port's Environmental Policy is a one-page document that

¹⁹ Ex. 12, EPA, 2017 Construction General Permit (CGP) – Fact Sheet, at 55 (2017), https://www.epa.gov/sites/production/files/2017-01/documents/2017_cgp_final_fact_sheet.pdf.

²⁰ *Id.* at 54.

²¹ *Id.* at 54-55.

²² *Id.* at 57-58.

²³ Ex. 13, Port of Portland, Project, Plans and Studies, https://popcdn.azureedge.net/images/ProjectPlansStudies_lrg_Map.jpg; *see also*, Port of Portland, Properties Portfolio Map, <https://www2.portofportland.com/Properties/PortfolioMap>.

²⁴ Ex. 14, Port of Portland, PDX Next, <http://www2.portofportland.com/PDXnext>.

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provides the Port will “integrate environmental considerations into all aspects of its strategic planning and business decision-making.”²⁵ The most relevant provision in the policy is a single sentence: “Pollution Prevention: Minimize pollution and waste through source reduction, reuse, or recycling.” But this vague platitude does nothing to prevent the mobilization of PCBs and release into waterbodies through the Port’s own redevelopment or demolition projects.

Similarly, the Port does not require its tenants to implement PCB-specific BMPs when they demolish or renovate buildings. For example, for improvements at Portland International Airport, the Port requires tenants to undergo a process including a pre-design meeting, schematic design review, design development review, and construction document review and permit issuance.²⁶ The Port requires detailed information from the applicant at each step. Yet the process has no requirement that tenants take basic precautions—including testing, implementing BMPs, and removing PCB-containing products—to prevent the mobilization and discharge of PCBs in building materials. Similarly, there is no indication that the Port requires such BMPs through its leases with tenants. As the EPA has indicated, these PCBs can be feasibly managed consistent with EPA regulatory requirements.²⁷ But the Port does not so require.

C. The Port’s Use of PCB-Containing Products

The TSCA regulations include an exemption allowing for products that contain PCBs and are otherwise inadvertently generated at levels of up to 50 parts per million.²⁸ PCBs continue to be generated as by-products of various routine manufacturing and chemical processes, including the production of dyes. The EPA has estimated that 100,000 pounds of “inadvertently generated” PCBs are produced annually in the U.S., and the Washington Department of Ecology recently determined that roughly half of all annual releases of PCBs in Washington State are actually “current generation” PCBs, produced after 1979.²⁹

Products that can contain PCBs in concentrations higher than water quality standards include road and utility paints, firefighting foam, deicers, dirt road dust suppressant, hydroseed, PVC pipe, and thermoplastic tape road striping, among others.³⁰ As shown in the table below,

²⁵ Ex. 15, Port of Portland Commission, Environmental Policy (Policy No. 6.1.11) (Feb. 9, 2000), https://popcdn.azureedge.net/pdfs/CommPolicy_6111.pdf.

²⁶ Ex. 16, Port of Portland, The Port of Portland Tenant Improvement Process, at 1 (July 2016), https://popcdn.azureedge.net/pdfs/PDX_Tenant_Improvmnt_Prcs.pdf.

²⁷ See, e.g., EPA, Polychlorinated Biphenyls (PCBs) in Building Materials, <https://www.epa.gov/pcbs/polychlorinated-biphenyls-pcbs-building-materials>.

²⁸ Ex. 17, Washington Department of Ecology, PCB Chemical Action Plan, at 59 (Feb. 2015), <https://fortress.wa.gov/ecy/publications/SummaryPages/1507002.html>.

²⁹ *Id.* at 14, 60.

³⁰ Ex. 18, City of Spokane Wastewater Management Department, PCBs in Municipal Products, at Table B-1 (revised July 21, 2015), <https://www.spokanecounty.org/DocumentCenter/View/3407>.

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the levels of PCBs in certain products commonly used by municipalities can be materially than higher Oregon's water quality standard.³¹

Select Maximum PCBs Concentrations in Products Tested by the City of Spokane	
Product	PCBs level in product (ppq)
Hydroseed	2,509,088,000
Yellow road paint	64,880,000
Thermoplastic road tape	10,776,000
Deicer	1,332,000

The Port of Portland uses (or requires others to use) all of the above types of products that would contain inadvertently generated PCBs:

- Traffic paint and thermoplastic tape. The Port of Portland has series of standards called the Master Specification and Design Standards that it uses and adapts for construction projects on Port property.³² The standard for pavement markings calls for the use of, among other things, yellow paint and striping tape.³³ It is known that storm water carries the chemicals in traffic markings to nearby waterbodies when it rains.³⁴
- Deicers. When weather is cold and icy, the Port of Portland uses deicers, both for airplanes and for roadways and pavement.³⁵
- Hydroseed. The Port's Master Specification and Design Standard calls for applying hydroseed on construction sites at high volumes—2,950 pounds per

³¹ *Id.*

³² Port of Portland, Master Specification and Design Standards, <https://www2.portofportland.com/Inside/CSIMasterSpecs>.

³³ Ex. 19, Port of Portland, Specification for Pavement Markings, available at <https://www2.portofportland.com/Inside/CSIMasterSpecs>.

³⁴ Ex. 20, Washington State Department of Ecology, Lead and Other Metals in Traffic Paint in Washington State, at 2 (May 2015) ("Stormwater can carry paint and its constituents into fresh and marine waters."), <https://fortress.wa.gov/ecy/publications/documents/1504018.pdf>.

³⁵ Ex. 21, Oregon Department of Environmental Quality, Permit Evaluation Report, at 4-5 (June 29, 2009), http://www.deq.state.or.us/wqpr/2697_2010052600005CS02.PDF.

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acre.³⁶ One study in Washington State found that dyes in hydroseed mixes are particularly likely to contain PCBs and recommended that the state consider dye-free hydroseed applications.³⁷ Despite this, the Port does not prohibit the use of dye in hydroseeding on Port projects.³⁸ PCBs in hydroseed are known to enter storm water and reach receiving waters.³⁹

The Port has no policy or standard prohibiting the Port itself or the Port's tenants from using products containing PCBs. For example, the Port's sustainability policy is a two-page document that does not require the Port to test products that it purchases for PCBs or stop purchasing products containing PCBs.⁴⁰ Indeed, the Policy is so general, it does not appear to require concrete action of any kind.

By failing to test for—and to discontinue the use of—products containing PCBs, and by failing to require its tenants to do the same, the Port is guaranteeing that it will discharge PCBs into nearby waterways that exceed water quality standards.

II. STATUTORY BACKGROUND

A. The Clean Water Act

In 1972, Congress amended the Federal Water Pollution Control Act of 1948 to remedy the historically unchecked degradation of the Nation's waters. Congress set forth the Clean Water Act's primary objective to "restore and maintain the chemical, physical, and biological integrity of the Nation's waters." 33 U.S.C. § 1251(a); *Arkansas v. Oklahoma*, 503 U.S. 91, 101 (1992). The introductory sections of the Act establish the ambitious goal of eliminating the discharge of pollutants into navigable waters by 1985, and an interim goal of achieving fishable and swimmable conditions, wherever possible, by 1983. 33 U.S.C. §§ 1251(a)(1-2). Congress amended the Clean Water Act in 1987 to make clear that storm water runoff is a national concern and is to be regulated by the Act. *See* 33 U.S.C. § 1342.

The Clean Water Act prohibits the discharge of any pollutant by any person except in compliance with enumerated sections of the Act. 33 U.S.C. § 1311(a). As such, the discharge of pollutants into U.S. waters is allowed only pursuant to an NPDES permit issued by the EPA or

³⁶ Ex. 22, Port of Portland, Specification for Seeding, at 4, available at <https://www2.portofportland.com/Inside/CSIMasterSpecs>.

³⁷ Ex. 23, Spokane River Regional Toxics Task Force, Hydroseed Pilot Project Summary Report, at 8 (July 31, 2015), <http://srrttf.org/wp-content/uploads/2015/03/Hydroseed-Pilot-Project-Report-FINAL.pdf>.

³⁸ Ex. 22, *supra* note 36.

³⁹ Ex. 24, EPA's Plan for Addressing PCBs in the Spokane River, at 9-10 (July 14, 2015), <http://srrttf.org/wp-content/uploads/2015/07/EPA-plan-for-PCBs-in-response-to-court-order.pdf>.

⁴⁰ Ex. 25, Port of Portland, Administrative Policy – Sustainability (May 7, 2014), [https://popcdn.azureedge.net/pdfs/Sustainability%207.4.19%20\(2014-05-07\).pdf](https://popcdn.azureedge.net/pdfs/Sustainability%207.4.19%20(2014-05-07).pdf).

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by an EPA-delegated State-permitting authority, such as DEQ. *Id.* Discharging pollutants without a permit is a strict-liability offense, and neither knowledge by the discharger nor environmental harm must be shown to establish a violation. *Hawai'i Wildlife Fund v. County of Maui*, 24 F. Supp. 3d 980, 997 (D. Haw. 2014).

Section 402(p) of the Clean Water Act establishes a framework for regulating municipal and industrial storm water discharges under the NPDES scheme. 33 U.S.C. § 1342(p). NPDES permits issued for discharges from municipal storm sewers "require controls to reduce the discharge of pollutants to the maximum extent practicable, including management practices, control techniques and system, design and engineering methods, and such other provisions as the Administrator . . . determines appropriate for the control of such pollutants." *Id.*; see also 40 C.F.R. § 122.44(d)(1); *Defenders of Wildlife v. Browner*, 191 F.3d 1159, 1166 (9th Cir. 1999) ("EPA has the authority to determine that ensuring strict compliance with State WQS is necessary to control pollutants.").

By regulation, EPA has defined storm water associated with industrial activity for which an NPDES permit is required to include storm water from "[c]onstruction activities including clearing, grading, and excavating that result in land disturbance of equal to or greater than one acre . . ." 40 C.F.R. § 122.26(b)(15).

Violation of permit issued under the Clean Water Act is a strict-liability offense. *United States v. STABL, Inc.*, 800 F.3d 476, 483 (8th Cir. 1015) ("Thus, without more, to violate a[n] NPDES permit is to violate the Act.") (citing *Chesapeake Bay Found. v. Bethlehem Steel Corp.*, 608 F. Supp. 440, 451 (D. Md. 1985)).

B. Surface Water Criteria

Section 303(d) of the Act, 33 U.S.C. § 1313(d), requires the State to identify surface waters that do not meet applicable water quality standards, even after the application of the technology-based effluent limitations required by Sections 301(b) and 306 of the Act. All EPA-delegated States, including Oregon, are required under Clean Water Act Section 303(d) and federal regulation, 40 C.F.R. § 130.0, to prepare a list of and set priorities for water-quality-limited segments (also referred to as "impaired water bodies").

The Port discharges storm water and wastewater into the following major water bodies: the Willamette River; the Columbia Slough; the Columbia River; McBride Slough; and Portland Harbor.⁴¹

The Clean Water Act also requires that the delegated State permitting authority ensure compliance with water quality standards in NPDES permits. See 33 U.S.C. § 1313(a). Water quality standards consist of the designated use of the water body (e.g., water contact recreation or municipal drinking water) and the State water quality criteria or standards that must be met to maintain the designated use. 33 U.S.C. § 1313(c)(2)(A); 40 C.F.R. § 131.3(i). Water quality

⁴¹ See, e.g., MS4 Permit (cover page); Columbia Slough Permit, at 1; EPA, Portland Harbor Study Area, https://www3.epa.gov/region10/pdf/sites/portlandharbor/location_map.jpg.

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criteria may be expressed numerically or with narrative descriptions of the required quality of water to support the designated use.⁴² 40 C.F.R. § 131.3(b).

The surface water quality standards regulate, among other things, the amount of toxic substances that may be legally discharged into surface waters. Oregon's narrative standard for toxics states as follows:

Toxic substances may not be introduced above natural background levels in waters of the state in amounts, concentrations, or combinations that may be harmful, may chemically change to harmful forms in the environment, or may accumulate in sediments or bioaccumulate in aquatic life or wildlife to levels that adversely affect public health, safety, or welfare or aquatic life, wildlife or other designated beneficial uses.

OAR 340-041-0033(1). PCBs fall within the scope of this regulation.

C. The MS4 Permit

The MS4 Permit requires the Port to reduce the discharge of pollutants to from its separate storm sewer system to the "maximum extent practicable ("MEP")." MS4 Permit, Schedule A, § 2. The permit states that "[c]ompliance with [the MS4 Permit] and implementation of a stormwater management program, including the Department approved Stormwater Management Plan (SWMP), establishes this MEP requirement" *Id.*⁴³

The permit specifies the minimum requirements for the Stormwater Management Plan, and it incorporates the plan by reference. *Id.* at Schedule A, § 3.a. The minimum requirements for the plan include:

- A program to reduce pollutants in storm water runoff from construction activities, including source-control to "[r]equire construction site operators to prevent or control non-stormwater waste that may cause adverse impacts to water quality, such as discarded building materials, concrete truck washout, chemicals, litter, and sanitary waste." *Id.* at Schedule A, § 4.c.iii.⁴⁴

⁴² Oregon's numeric surface water quality criteria are available at <http://www.oregon.gov/deq/wq/Pages/WQ-Standards.aspx>.

⁴³ The Port must also reduce pollutants with a wasteload allocation under a total maximum daily load ("TMDL") to the maximum extent practicable and employ adaptive management. MS4 Permit, Schedule D, § 3.a.

⁴⁴ See also Ex. 26, Port of Portland, Stormwater Management Plan, at 5 (September 20, 2010) (listing implementation of this provision of the MS4 Permit as occurring through the Port's and the City of Portland's construction permits), <https://popcdn.azureedge.net/pdfs/StrmWtr-Management-Plan-MS4-2015.pdf>.

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- A program to “reduce the discharge of pollutants to the MS4 from properties owned or operated” by the Port. This includes the requirement to “[o]perate and maintain public streets, roads and highways in a manner designed to minimize the discharge of stormwater pollutants to the MS4, including pollutants discharged as a result of deicing activities.” *Id.* at Schedule A, § 4.g.⁴⁵
- A program of adaptive management “to assess annually and modify, as necessary, any or all existing SWMP components and adopt new or revised SWMP components to achieve reductions in stormwater pollutants to the MEP.” *Id.* at Schedule D, § 4.

While the MEP standard applies generally to all pollutants, the permit also requires the Port to meet water quality criteria for pollutants deemed toxic:

The co-permittee must comply with any applicable effluent standard or prohibitions established under Oregon Administrative Rules (OAR) 340-041-0033 for toxic pollutants within the time provided in the regulations that establish those standards or prohibitions, even if the permit has not yet been modified to incorporate the requirement.

Id. at Schedule F, § 6; OAR 340-041-0033 (narrative water quality standard and numeric criteria for toxic pollutants).

D. The Construction General Permit

Operators, including the Port, undertaking the following activities are required to seek coverage under and to comply with the Construction General Permit: “clearing, grading, excavation, materials or equipment staging and stockpiling that will disturb one or more acres and may discharge to surface waters or conveyance systems leading to surface waters of the state.” Construction General Permit, at 1.

The Construction General Permit prohibits discharges that “cause or contribute to a violation of in-stream water quality standards.” *Id.*, Schedule A, § 10.a; *see also, id.*, Schedule F, § A6 (“[t]he permittee must comply with any applicable effluent standards or prohibitions established under Oregon Administrative Rules (OAR) 340-041-0033 and 307(a) of the federal Clean Water Act for toxic pollutants ...”). The Port must report violations of water quality standards to DEQ and take corrective actions within 10 days of construction activity that “causes or contributes to a violation of in-stream water quality standards.” *Id.*, Schedule A, § 13.a.ii, b.iii. The permit also specifically requires the Port to implement pollution prevention measures during construction to “to minimize the exposure of building materials, building products, construction wastes ... and other materials present on the site to precipitation and to stormwater.” *Id.*, Schedule A, § 7.e.i.

⁴⁵ *See also id.* at 7 (requiring the Port to “Implement a Street and Vehicle Maneuvering Area Cleaning and Maintenance Program.”).

The previous versions of the Construction General Permit that the Port was subject to contained similar requirements.⁴⁶

E. The Industrial General Permit and the Columbia Slough Permit

Facilities that are associated with certain industrial activities and that may discharge storm water from a point source are required to obtain coverage under and to comply with the terms of the Industrial General Permit. Industrial General Permit at 1. The Port of Portland is subject to the Industrial General Permit for at least three facilities: Terminal 2, the Troutdale Airport, and the Hillsboro Airport.⁴⁷ The permit prohibits discharges that “cause or contribute to a violation of instream water quality standards.” *Id.* at Schedule A, § 4.a. Within 24 hours of discovering a violation, the discharger must investigate the conditions that triggered the violation, and within 30 days discharger must submit a corrective action report to DEQ. *Id.* at Schedule A, § 4.b. The permit also requires the discharger to prepare a Stormwater Pollution Control Plan, which must include, among other things, a “description of the potential pollutant sources that could be present in stormwater discharges.” *Id.* at Schedule A, § 7.b.iv.

The Columbia Slough Permit governs the discharge of stormwater associated with industrial activities into the Columbia Slough, and it has similar requirements as the Industrial General Permit. Columbia Slough Permit at Schedule A, § 4.a (“permit registrant must not cause or contribute to a violation of instream water quality standards ...”); Schedule A, § 5.a (requiring compliance with water quality standards for discharge into impaired water with total maximum daily load (“TMDL”)); Schedule A, § 4.b (permittee must submit corrective actions report to DEQ within 30 days of discovering a violation); Schedule A, § 7.b.iv (Stormwater Pollution Control Plan must include “description of the potential pollutant sources that could be present in stormwater discharges.”).

F. The Deicing Permit

The Port’s historic use of deicers has impaired water quality, resulting in the Port being subject to a Mutual Agreement and Order with the Oregon Department of Environmental Quality

⁴⁶ Ex. 27, DEQ, Stormwater Discharge Permit No. 1200-C (Dec. 1, 2010), Schedule A, § 10.a (compliance with water-quality standards required), § 7.e (BMPs required to prevent or minimize stormwater from coming into contact with pollutants), § 13 (corrective action and reporting to DEQ required if construction activity causes or contributes to violation of water quality standards); Schedule F, § 6 (permittee must comply with applicable effluent standards and prohibitions for toxic pollutants), <https://www.portlandoregon.gov/bes/article/343421>; Ex. 28, DEQ, Stormwater Discharge Permit No. 1200-CA, Schedule A, § 3.d.vi (BMPs required to prevent or minimize storm water from coming into contact with pollutants); Schedule F, § 6 (permittee must comply with applicable effluent standards and prohibitions for toxic pollutants), <http://www.deq.state.or.us/wq/wqpermit/docs/general/npdes1200ca/permit.pdf>.

⁴⁷ Port of Portland, Stormwater Management at the Port of Portland, <https://www2.portofportland.com/Inside/StormwaterManagement>.

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requiring the Port to come into compliance with environmental requirements.⁴⁸ This has led to the Port being subject to a specific permit for its deicing operations and Portland International Airport.⁴⁹ The current Deicing Permit allows discharges related to the deicing of aircraft and pavement, but only if the Port meets strict conditions. “[N]o wastes may be discharged or activities conducted that cause or contribute to a violation of water quality standards” outside of a mixing zone or as allowed by the permit. Deicing Permit at 3; *see also, id.* at 4 (“Notwithstanding the effluent limitations established by this permit, no wastes shall be discharged and no activities shall be conducted which will violate Water Quality Standards”). Similarly, the permit explicitly requires the Port to comply with the water quality standards for toxic pollutants. *Id.* at 13. The permit instructs the Port to report non-compliance to the Oregon Department of Environmental Quality. *Id.* at 17.

III. THE PORT HAS VIOLATED THE MS4 PERMIT AND THE CLEAN WATER ACT

A. The Port’s Violations of the Clean Water Act, 33 U.S.C. §§ 1311 & 1342 and the MS4 Permit, Schedule A, §§ 2, 3, 4

The MS4 Permit requires the Port to reduce the discharge of pollutants to the “maximum extent practicable.” MS4 Permit, Schedule A, §§ 2, 3. Among other things, this requires the Port to “[o]perate and maintain public streets, roads and highways in a manner designed to minimize the discharge of stormwater pollutants to the MS4, including pollutants discharged as a result of deicing activities.” *Id.* at Schedule A, § 4.g.

But the Port has failed to undertake simple measures that would be practicable and reasonable—and highly effective. For example, the Port has no purchasing policy requiring it to purchase only products free of PCBs—even for products that will inevitably come into contact with storm water and be discharged into receiving waters. As a result, the Port continues to use products, including traffic paint, deicers, and hydroseed—all of which are highly likely to eventually enter storm water—that, based upon product testing, contain PCBs at levels materially higher than the water quality standard.

The permit also requires the Port to implement an effective program to reduce pollutants in storm water from construction sites. *Id.* at Schedule A, § 4.c.iii. But the Port fails to mandate PCB-specific BMPs before allowing tenants to demolish or renovate older buildings that are highly likely to contain PCBs. This results in PCBs being mobilized and eventually entering storm water and waterbodies, both through storm water systems and through artificial channels. The Port has no policy or standard requiring such BMPs for its own renovations and demolitions.

By continuing to use products containing PCBs and by failing to have a policy requiring PCB-specific BMPs for building renovation and demolition, the Port is failing to reduce the discharge of pollutants to the “maximum extent practicable,” and it is violating the MS4 Permit.

⁴⁸ Ex. 21, Permit Evaluation Report, *supra* note 35, at 3.

⁴⁹ *Id.*

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B. The Port's Violations of the Clean Water Act, 33 U.S.C. §§ 1311 & 1342 and the MS4 Permit, Schedule F, § 6

Schedule F, § 6 of the MS4 Permit requires the Port to comply with water quality standards for toxic pollutants. The Port does not comply with this requirement. Rather, recent sampling shows that storm water in the Portland watershed has PCB levels materially higher than Oregon's standards.⁵⁰

The Port has taken inadequate affirmative steps to eliminate the discharge of PCBs in storm water, in violation of water quality standards. These violations are ongoing and will continue in the future. Every day that polluted storm water enters the Port's MS4 in violation of the water quality standards for toxic pollutants—including the human-health-based criteria for PCBs and the narrative standard for toxics—is a separate and distinct violation of the Clean Water Act § 301, 33 U.S.C. § 1311, and the MS4 Permit. Pursuant to Section 309(d) of the Clean Water Act, the Port is subject to penalties for all violations of the MS4 Permit and the Act occurring within the past five years. 33 U.S.C. § 1319(d).

C. The Port's Violations of the Clean Water Act, 33 U.S.C. §§ 1311 & 1342 and the MS4 Permit, Schedule D, §§ 3.a, 4

The MS4 permit requires the Port to follow an "adaptive management" approach to enhance continually the protection of water quality and "achieve reductions in stormwater pollutants to the MEP." MS4 Permit, Schedule D, § 4; *see also*, § 3.a. The Port has violated this permit condition by failing to adopt feasible measures that would reduce pollutants—including adopting purchasing policies to avoid the use of products containing PCBs and requiring PCB-specific BMPs for demolition or remodeling of buildings that may contain PCBs.

IV. THE PORT HAS VIOLATED THE CLEAN WATER ACT AND THE CONSTRUCTION GENERAL PERMIT

In its construction projects, the Port uses products known to have PCBs, including hydroseed and deicers. Additionally, the Port has enacted no requirement to implement PCBs-specific best management practices to identify and remove PCB-containing materials when renovating or demolishing buildings. By failing to implement such best management practices, the Port is violating the Construction General Permit, Schedule A, § 10.a (requiring compliance with water quality standards) (*see also* Schedule F, § A6) and Schedule A, § 7.e.i (requiring the permittee to prevent the exposure of building materials and pollutants to precipitation or storm water).

These violations occur each day that the Port works on a construction project covered by the Construction General Permit or allows a tenant to work on such a project where the project (1) uses materials containing PCBs or (2) fails to implement PCB-specific best management practices in the demolition or renovation of buildings. The Port is subject to penalties for all

⁵⁰ Ex. 11, EPA, *supra* note 16, at 14.

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violations of the Clean Water Act described in this section occurring in the past five years. 33 U.S.C. § 1319 (d).

V. THE PORT HAS VIOLATED THE CLEAN WATER ACT, THE INDUSTRIAL GENERAL PERMIT, AND THE COLUMBIA SLOUGH PERMIT

The Industrial General Permit and the Columbia Slough Permit both prohibit the Port from discharging storm water from industrial sites that causes or contributes to a violation of water quality standards. Industrial General Permit at Schedule A, §§ 4.a, 5.a; Columbia Slough Permit at Schedule A, §§ 4.a, 5.a. But storm water from industrial sites at Port facilities contains PCBs at levels that exceed water quality standards.⁵¹

Similarly, the Industrial General Permit and the Columbia Slough Permit both require the Port to investigate violations promptly, take remedial action, and report the violations to DEQ. Industrial General Permit at Schedule A, § 4.b; Columbia Slough Permit at Schedule A, § 4.b. But the Port has not reported its violations of water quality standards for PCBs to DEQ or taken the required corrective actions.

Both the Industrial General Permit and the Columbia Slough Permit require the Port to prepare a Stormwater Pollution Control Plan that, among other things, describes potential pollutant sources that could be present in storm water discharges. Industrial General Permit at Schedule A, § 7.b.iv; Columbia Slough Permit at Schedule A, § 7.b.iv. The Port's Stormwater Pollution Control Plans fail to list products containing PCBs (inadvertently generated or otherwise) as a potential pollutant source, even though the Port uses such products, and they often contain PCBs at levels materially higher than the water quality standards.⁵² This is a permit violation, and it also undermines the effectiveness of the entire Stormwater Pollution Control Plan—if the Port does not even acknowledge that products it is using at industrial sites contain PCBs, it is difficult to control those PCBs.

⁵¹ E.g., Ex. 11, RI Report, Appendix C, *supra* note 16, at 14 (PCB levels for industrial storm water for Portland Harbor site); Ex. 7, Memorandum Re: Final Source Control Decision, Operable Unit 3-Swan Island Upland Facility, ECSI Site ID No. 271, *supra* note 9, at Table 3.

⁵² Port of Portland, Stormwater Pollution Control Plan for Portland International Airport (Mar. 24, 2016), <https://popcdn.azureedge.net/pdfs/StrmWtr-PDX-Pollution-Control-Plan.pdf>; Port of Portland, Stormwater Pollution Control Plan for Hillsboro Airport (Jan. 30, 2017), <https://popcdn.azureedge.net/pdfs/StrmWtr-HIO-Pollution-Control-Plan.pdf>; Port of Portland, Stormwater Pollution Control Plan for Troutdale Airport (Jan. 10, 2017), <https://popcdn.azureedge.net/pdfs/StrmWtr-TTD-Pollution-Control-Plan.pdf>; Port of Portland, Stormwater Pollution Control Plan for Terminal 2 Facility (Jan. 30, 2017), <https://popcdn.azureedge.net/pdfs/StrmWtr-T2-Pollution-Control-Plan.pdf>.

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VI. THE PORT HAS VIOLATED THE CLEAN WATER ACT AND THE DEICING PERMIT

The Port has taken steps to address certain pollution caused by its use of deicers, including biochemical oxygen demand.⁵³ But the Port has shown no awareness that deicers commonly contain PCBs that exceed water quality standards. Upon information and belief, the Port has violated its Deicer Permit by discharging deicers that contain PCBs that exceed water quality standards and by failing to report its violations to the Oregon Department of Environmental Quality. These violations occur every time that the Port discharges deicers or storm water containing deicers exceeding the water quality standards.

VII. THE PORT HAS VIOLATED THE CLEAN WATER ACT BY DISCHARGING POLLUTANTS WITH NO PERMIT

Under the Clean Water Act, a point source includes vehicles—such as deicing trucks or road-painting trucks—that discharge pollutants directly into or over navigable waters. *See, e.g., League of Wilderness Defenders v. Forsgren*, 309 F.3d 1181, 1185 (9th Cir. 2002) (planes spraying pesticides over forest is a point source); *Sierra Club v. BNSF Ry. Co.*, 2016 U.S. Dist. LEXIS 147786 (coal particles emitted from trains traveling adjacent to and over waters are point source discharges).

When the Port repeatedly applies to the roads and at airports products that contain PCBs—including deicers and road paint—some of these products are inevitably discharged directly to waterbodies.⁵⁴ Upon information and belief, every time the Port applies such products directly to its roadways and at airports, a portion of them is discharged directly to nearby waterbodies, in violation of the Clean Water Act. Similarly, the Port has had unpermitted discharges of storm water and non-storm water through artificial channels and other point sources not covered by NPDES permits.

VIII. CONCLUSION

The Claimants believe this Notice Letter sufficiently states grounds for filing suit. Upon expiration of the 60-day notice period, the Claimants intend to amend their counterclaims in the Action to include a citizen enforcement action in federal court pursuant to Section 505(a) of the Clean Water Act for the above violations. In addition to the violations set forth above, this Notice Letter covers all violations of the Clean Water Act by the Port evidenced by information that becomes available to the Claimants after the date hereof.

⁵³ Ex. 21, Permit Evaluation Report, *supra* note 35, at 4-5; *see also* Port of Portland, PDX Deicing System Enhancements Selected (May 9, 2007), http://www.portofportland.com/PDFPOP/PDX_Deicing_NewsRelease_05232007.pdf (describing improvements to address biochemical oxygen demand).

⁵⁴ *See, e.g.,* Ex. 29, Ohio Office of Compliance Assistance & Pollution Prevention, Pollution Prevention in Painting and Coating Operations, at 2 (2004) (regarding potential for paint to drift), <http://www.epa.ohio.gov/portals/41/fact23.pdf>.

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Pursuant to Section 309(d) of the Act, 33 U.S.C. § 1319(d), and the Adjustment of Civil Monetary Penalties for Inflation, 40 C.F.R. § 19.4 (1997), each separate violation of the Clean Water Act subjects the violator to a penalty. These provisions of law authorize civil penalties of up to \$37,500 per day per violation for all Clean Water Act violations occurring after January 12, 2009 through November 2, 2015, and up to \$52,414 per day per violation for violations after November 2, 2015. In addition to civil penalties, the Claimants may seek preliminary and permanent injunctive relief preventing further violations of the Clean Water Act pursuant to Sections 505(a) and (d), 33 U.S.C. § 1365(a) and (d), and such other relief as is permitted by law. Lastly, Section 505(d) of the Clean Water Act, 33 U.S.C. § 1365(d), permits prevailing parties to recover costs and fees.

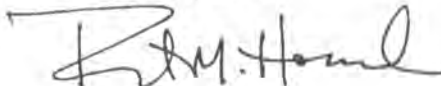
The Claimants have retained legal counsel to represent it in this matter. Please direct all communications to:

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Very truly yours,



Robert M. Howard
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1

Expiration Date: January 30, 2016

Permit Number: 101314

File Number: 108015

NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM
MUNICIPAL SEPARATE STORM SEWER SYSTEM (MS4) DISCHARGE PERMIT

Oregon Department of Environmental Quality

811 SW Sixth Ave., Portland OR 97204-1390

Telephone: 503-229-5630

Issued pursuant to Oregon Revised Statute 468B.050 and the Federal Clean Water Act

ISSUED TO:

City of Portland

Port of Portland

SOURCES COVERED BY THIS PERMIT:

This permit covers all existing and new discharges of stormwater from the Municipal Separate Storm Sewer System (MS4) within the City of Portland Urban Services Boundary.

COUNTY: Multnomah

RECEIVING WATERBODIES:

Basin(s): Willamette River, Columbia River

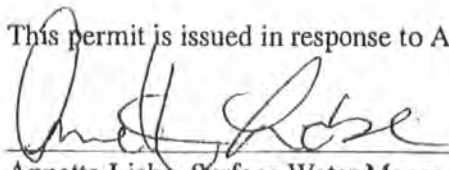
Sub-basin(s): Lower Willamette River, Columbia Slough, Tualatin River

Stream(s): Columbia River, Columbia Slough, Fanno Creek, Balch Creek, Johnson Creek, and Tryon Creek

WASTE LOAD ALLOCATIONS: A Total Maximum Daily Load (TMDL) that includes wasteload allocations for urban stormwater has been established for the Willamette River Basin, Columbia River Basin, Tualatin River Subbasin, and the Columbia Slough. Waste load allocations are addressed in Schedule D of this permit.

EPA REFERENCE NO.: ORS108015

This permit is issued in response to Application Number 972521 received on September 2, 2008.



Annette Liebe, Surface Water Management Section Manager

1/31/2011

Date

PERMITTED ACTIVITIES

Until this permit expires or is modified or revoked, the co-permittee is authorized to discharge municipal stormwater to waters of the state in conformance with the requirements and conditions set forth in the attached schedules. Where conflict exists between specific conditions (found in Schedules A-D) and general conditions (Schedule F), the specific conditions supersede the general conditions.

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SCHEDULE A

Controls and Limitations for Stormwater Discharges from Municipal Separate Storm Sewer Systems

1. Prohibit Non-stormwater Discharges

The co-permittees must effectively prohibit non-stormwater discharges into the MS4 unless such discharges are otherwise permitted under Subsection A.4.a.xii., another NPDES permit or other applicable state or federal permit, or are otherwise exempted or authorized by the Department.

2. Reduce Pollutants to the Maximum Extent Practicable

Each co-permittee must reduce the discharge of pollutants from the MS4 to the maximum extent practicable (MEP). Compliance with this permit and implementation of a stormwater management program, including the Department-approved Stormwater Management Plan (SWMP), establishes this MEP requirement, unless or until the Department reopens the permit as provided in Oregon Administrative Rule (OAR) 340-045-0040 and 0050 to require additional controls.

3. Implement the Stormwater Management Plan

The co-permittees must continue to implement and assess the effectiveness of its Department-approved SWMP. The SWMP must guide each co-permittee in the implementation of its stormwater management program.

- a. The SWMPs and any Department-approved amendments thereto, are hereby incorporated into the permit by reference. The applicable SWMP is as follows:
 - i. For the City of Portland: The SWMP is the proposed SWMP submitted with the NPDES permit re-application and amendment received by the Department on August 13, 2010, the addition of the special conditions specified in Schedule D.6., and any subsequent changes made to the SWMP in accordance with the conditions of this permit.
 - ii. For the Port of Portland: The SWMP is the proposed SWMP submitted with the NPDES



permit re-application and amendment received by the Department on September 20, 2010, the addition of the special conditions specified in Schedule D.6., and any subsequent changes made to the SWMP in accordance with the conditions of this permit.

- b. Each co-permittee is responsible for compliance within its jurisdiction as identified in this permit, and is not responsible for compliance outside of its jurisdiction.
- c. The SWMP must be electronically available through direct incorporation into the co-permittee's website or other similar method approved by the Department.

4. Stormwater Management Plan Requirements

Each co-permittee must implement a SWMP that outlines the practices, techniques or provisions associated with protecting water quality and satisfying requirements of this permit and includes measurable goals for the stormwater program elements identified in subsections a-h. The measurable goals must identify actions the permittee will undertake to implement best management practices (BMPs), and include, where appropriate, the frequency, timeline and/or location where the BMP actions will occur.

- a. **Illicit Discharge Detection and Elimination:** Co-permittees must continue to implement a program to detect, remove, and eliminate illicit discharges to the MS4. The program must:
 - i. Prohibit, through ordinance or other regulatory mechanism, illicit discharges into the co-permittee's MS4.
 - ii. Include documentation in an enforcement response plan or similar document by November 1, 2011 describing the enforcement response procedures the co-permittee will implement when an illicit discharge investigation identifies a responsible party.
 - iii. Develop or identify pollutant parameter action levels that will be used as part of the field screening. The action levels will identify concentrations for identified pollutants that, if exceeded, will require further investigation, including laboratory sample analyses, to identify the source of the illicit discharge. The pollutant parameter action levels and rationale for using the action levels must be documented in an enforcement response plan or similar document, and reported to the Department by November 1, 2011.
 - iv. Conduct annual dry-weather inspection activities during the term of the permit. By July 1, 2012, the dry-weather inspection activities must include annual field screening of identified priority locations documented by the co-permittee. Priority locations must, where possible, be located at an accessible location downstream of any source of suspected illegal or illicit activity or other location as identified by the co-permittee. Priority locations must be based on an equitable consideration of hydrological conditions, total drainage area of the location, population density of the location, traffic density, age of the structures or buildings in the area, history of the area, land use types, personnel safety, accessibility, historical complaints or other appropriate factors as identified by the co-permittee. The dry-weather field screening activities must occur

after an antecedent dry period of at least 72-hours. The dry-weather field screening activities must be documented and include:

1. General observations, including visual presence of flow, turbidity, oil sheen, trash, debris or scum, condition of conveyance system or outfall, color, odor and any other relevant observations related to the potential presence of non-storm water or illicit discharges.
 2. Field Screening - If flow is observed, and the source is unknown, a field analysis must be conducted to determine the cause of the dry-weather flow. The field analysis must include sampling for pollutant parameters that are likely to be found based upon the suspected source of discharge or by other effective investigatory approaches or means to identify the source or cause of the suspected illicit discharge. Where appropriate, field screening pollutant parameter action levels identified by the permittee must be considered. Suspected sources of discharge include, but are not limited to, sanitary cross-connections or leaks, spills, seepage from storage containers, non-stormwater discharges or other residential, commercial, industrial or transportation-related activities.
 3. Laboratory Analysis – If general observations and field screening indicate an illicit discharge and the presence of a suspected illicit discharge cannot be identified through other investigatory methods, the co-permittee must collect a water quality sample for laboratory analyses for ongoing discharges. The water quality sample must be analyzed for pollutant parameters or identifiers that will aid in the determination of the source of the illicit discharge. The types of pollutant parameters or identifiers may include, but are not limited to genetic markers, industry-specific toxic pollutants, or other pollutant parameters that may be specifically associated with a source type.
- v. Identify response procedures to investigate portions of the MS4 that, based on the results of general observations, field screening, laboratory analysis or other relevant information, such as a complaint or referral, indicates the likely presence of an illicit discharge. The response procedures must reflect the goal to eliminate the illicit discharge in an expeditious manner, as specified in subsection vii. below.
- vi. Maintain a system for documenting illicit discharge complaints or referrals, and suspected illicit discharge investigation activities.
- vii. Once the source of an illicit discharge is determined, the co-permittee must take appropriate action to eliminate the illicit discharges, including an initial evaluation of the feasibility to eliminate the discharge, within 5 working days. If the co-permittee determines that the elimination of the illicit discharge will take more than 15 working days due to technical, logistical or other reasonable issues, the co-permittee must develop and implement an action plan to eliminate the illicit discharge in an expeditious manner. The action plan must be completed in 20 working days of determining the source of an illicit discharge. In lieu of developing and implementing an individual

action plan for common types of illicit discharges, the co-permittee may document and implement response procedures, a response plan or similar document. The action plan, response procedures, response plan or similar document must include a timeframe for elimination of the illicit discharge as soon as practicable.

- viii. Describe and implement procedures to prevent, contain, respond to and mitigate spills that may discharge into the MS4. Spills, or other similar illicit discharges, that may endanger human health or the environment must be reported in accordance with all applicable federal and state laws, including proper notification to the Oregon Emergency Response System.
- ix. In the case of a known illicit discharge that originates within the co-permittee's MS4 regulated area and that discharges directly to a storm sewer system or property under the jurisdiction of another municipality, the co-permittee must notify the affected municipality as soon as practicable, and at least within one working day of becoming aware of the discharge.
- x. In the case of a known illicit discharge that is identified within the co-permittee's MS4 regulated area, but is determined to originate from a contributing storm sewer system or property under the jurisdiction of another municipality, the co-permittee must notify the contributing municipality or municipality with jurisdiction as soon as practicable, and at least within one working day of identifying the illicit discharge.
- xi. Maintain maps identifying known co-permittee-owned MS4 outfalls discharging to waters of the State. The dry-weather screening priority locations must be specifically identified on maps by July 1, 2012. If the co-permittee identifies the need to modify these maps, the maps must be updated in digital or hard-copy within six months of identification.
- xii. Unless the following non-stormwater discharges are identified in a particular case as a significant source of pollutants to waters of the State by the permittee or the Department, they are not considered illicit discharges and are authorized by this permit: water line flushing; landscape irrigation; diverted stream flows; rising ground waters; uncontaminated groundwater infiltration; uncontaminated pumped ground water; discharges from potable water sources; start up flushing of groundwater wells; potable groundwater monitoring wells; draining and flushing of municipal potable water storage reservoirs; foundation drains; air conditioning condensate; irrigation water; springs; water from crawl space pumps; footing drains; lawn watering; individual residential car washing; charity car washing; flows from riparian habitats and wetlands; dechlorinated swimming pool discharges; street wash waters; discharges of treated water from investigation, removal and remedial actions selected or approved by the Department pursuant to Oregon Revised Statute (ORS) Chapter 465; and, discharges or flows from emergency fire fighting activities. If any of these non-stormwater discharges under the co-permittee's jurisdiction is a significant source of pollutants, the permittee must develop and require implementation of appropriate BMPs to reduce the discharge of pollutants associated with the source.

- b. **Industrial and Commercial Facilities:** The co-permittee must continue to implement a program to reduce pollutants in stormwater discharges to the MS4 from facilities the co-permittee identified as being subject to a Department-issued industrial stormwater NPDES permit, hazardous waste treatment, disposal and recovery facilities, industrial facilities that are subject to section 313 of title III of the Superfund Amendments and Reauthorization Act of 1986, or facilities that have been identified as contributing a significant pollutant load to the MS4. The co-permittee must:
- i. Screen existing and new industrial facilities to assess whether they have the potential to be subject to an industrial stormwater NPDES permit or have the potential to contribute a significant pollutant load to the MS4.
 - ii. Within 30 days after the facility is identified, notify the industrial facility and the Department that an industrial facility is potentially subject to an industrial stormwater NPDES permit.
 - iii. Implement an updated strategy to reduce pollutants in stormwater discharges to the MS4 from industrial and commercial facilities where site-specific information has identified a discharge as a source that contributes a significant pollutant load to the MS4. The strategy must include a description of the rationale for identifying commercial and industrial facilities as a significant contributor, and establish the priorities and procedures for inspection of and implementation of stormwater control measures. This strategy must be implemented by January 1, 2013, and applied within one calendar year from the date a new source contributing a significant pollutant load to the MS4 has been identified.
- c. **Construction Site Runoff Control:** Co-permittees must continue to implement a program to reduce pollutants in stormwater runoff to the MS4 from construction activities. The program must:
- i. Include ordinances or other enforceable regulatory mechanisms that require erosion prevention and sediment controls to be designed, implemented, and maintained to prevent adverse impacts to water quality and minimize the transport of construction-related contaminants to waters of the State. The construction site runoff control program ordinances or other enforceable regulatory mechanism must apply to construction activities that result in a land disturbance of 500 square feet or greater.
 - ii. Require construction site operators to develop erosion prevention and sediment control site plans, and to implement and to maintain effective erosion prevention and sediment control best management practices.
 - iii. Require construction site operators to prevent or control non-stormwater waste that may cause adverse impacts to water quality, such as discarded building materials, concrete truck washout, chemicals, litter, and sanitary waste.
 - iv. Describe site plan review procedures to ensure that stormwater BMPs are appropriate and

address the construction activities being proposed. At a minimum, construction site erosion prevention and sediment control plans for sites disturbing one acre or greater must be consistent with the substantive requirements of the State of Oregon's 1200-C permit site erosion prevention and sediment control plans.

- v. Co-permittees must perform on-site inspections in accordance with documented procedures and criteria to ensure that the approved erosion prevention and sediment control plan is properly implemented. Inspections of construction sites must include disturbed areas of the site, material and waste storage areas, stockpile areas, construction site entrances and exits, sensitive areas, discharge locations to the MS4, and, if appropriate, discharge locations to receiving waters. Inspections must be documented, including photographs and monitoring results as appropriate.
 - vi. Describe in an enforcement response plan or similar document the enforcement response procedures the co-permittee will implement. The enforcement response procedures must ensure construction activities are in compliance with the ordinances or other regulatory mechanisms.
- d. **Education and Outreach:** Co-permittees must implement an education and outreach program designed to achieve measurable goals based on target audiences, specific stormwater quality issues in the community, or identified pollutants of concern. The program must:
- i. Continue to implement a documented public education and outreach strategy that promotes pollutant source control and a reduction of pollutants in stormwater discharges. The strategy must identify targeted pollutants of concern, the targeted audience, specific education activities, and the entity or individual responsible for implementation. The public education and outreach strategy may incorporate cooperative efforts with other MS4 regulated permittees or efforts by other groups or organizations provided a mechanism is developed and implemented to track the public education and outreach efforts within the MS4 regulated area and the results of such efforts are reported annually.
 - ii. Provide educational materials to the community or conduct equivalent outreach activities describing the impacts of stormwater discharges on water bodies and the steps or actions the public can take to reduce pollutants in stormwater runoff.
 - iii. Provide public education on the proper use and disposal of pesticides, herbicides, fertilizers and other household chemicals.
 - iv. Provide public education on the proper operation and maintenance of privately-owned or operated stormwater quality management facilities.
 - v. Provide notice to construction site operators concerning where education and training to meet erosion prevention and sediment control requirements can be obtained.



- vi. Conduct or participate in an effectiveness evaluation to measure the success of public education activities during the term of this permit. The effectiveness evaluation must focus on assessing changes in targeted behaviors. The results of the effectiveness evaluation must be used in the adaptive management of the education and outreach program, and reported to the Department no later than November 1, 2014.
- vii. Include training for co-permittee employees involved in MS4-related activities, as appropriate. The training should include stormwater pollution prevention and reduction from municipal operations, including, but not limited to, parks and open space maintenance, fleet and building maintenance, new municipal facility construction and related land disturbances, design and construction of street and storm drain systems, discharges from non-emergency fire fighting-related training activities, and stormwater system maintenance.
- viii. Promote, publicize and facilitate public reporting of illicit discharges through the use of newspapers, newsletters, utility bills, door hangers, radio public service announcements, videos, televised council meetings, brochures, signs, posters or other effective methods.
- e. **Public Involvement and Participation:** Co-permittees must implement a public participation approach that provides opportunities for the public to effectively participate in the development, implementation and modification of the co-permittee's stormwater management program. The approach must include provisions for receiving and considering public comments on the monitoring plan due to the Department June 1, 2011, annual reports, SWMP revisions, and the TMDL pollutant load reduction benchmark development.
- f. **Post-Construction Site Runoff:** Co-permittees must continue to implement their post-construction stormwater pollutant and runoff control program.
 - i. By January 1, 2014, the post-construction stormwater pollutant and runoff control program applicable to new development and redevelopment projects that create or replace 500 ft² of impervious surface must meet the following conditions:
 - 1) Incorporate site-specific management practices that target natural surface or predevelopment hydrologic functions as much as practicable. The site-specific management practices should optimize on-site retention based on the site conditions;
 - 2) Reduce site specific post-development stormwater runoff volume, duration and rates of discharges to the municipal separate storm sewer system (MS4) to minimize hydrological and water quality impacts from impervious surfaces;
 - 3) Prioritize and include implementation of Low-Impact Development (LID), Green Infrastructure (GI) or equivalent design and construction approaches; and,
 - 4) Capture and treat 80% of the annual average runoff volume, based on a documented local or regional rainfall frequency and intensity.

- ii. The co-permittee must identify, and where practicable, minimize or eliminate ordinance, code and development standard barriers within their legal authority that inhibit design and implementation techniques intended to minimize impervious surfaces and reduce stormwater runoff (e.g., Low Impact Development, Green Infrastructure). Such modifications to ordinance, code and development standards are only required to the extent they are permitted under federal and state laws. The co-permittee must review ordinance, code and development standards for modification, minimization or elimination, and appropriately modify ordinance, code or development standard barriers by January 1, 2014. If an ordinance, code or development standard barrier is identified at any time subsequent to January 1, 2014, the applicable ordinance, code or development standard must be modified within three years.
- iii. To reduce pollutants and mitigate the volume, duration, time of concentration and rate of stormwater runoff, the co-permittee must develop or reference an enforceable post-construction stormwater quality management manual or equivalent document by January 1, 2014 that, at a minimum, includes the following:
 - 1) A minimum threshold for triggering the requirement for post-construction stormwater management control and the rationale for the threshold.
 - 2) A defined design storm or an acceptable continuous simulation method to address the capture and treatment of 80% of the annual average runoff volume.
 - 3) Applicable LID, GI or similar stormwater runoff reduction approaches, including the practical use of these approaches.
 - 4) Conditions where the implementation of LID, GI or equivalent approaches may be impracticable.
 - 5) BMPs, including a description of the following:
 - a. Site-specific design requirements;
 - b. Design requirements that do not inhibit maintenance; and,
 - c. Conditions where the BMP applies.
 - 6) Pollutant removal efficiency performance goals that maximize the reduction in discharge of pollutants.
- iv. The co-permittee must review, approve and verify proper implementation of post-construction site plans for new development and redevelopment projects applicable to this section. The Port of Portland may address this permit requirement by documenting that all internal Port of Portland development projects meet the Post-Construction Site Runoff performance standards required in this subsection.
- v. Where a new development or redevelopment project site is characterized by factors limiting use of on-site stormwater management methods to achieve the post-construction site runoff performance standards, such as high water table, shallow bedrock, poorly-drained or low permeable soils, contaminated soils, steep slopes or other constraints, the

Post-Construction Stormwater Management program must require equivalent pollutant reduction measures, such as off-site stormwater quality management. Off-site stormwater quality management may include off-site mitigation, such as using low impact development principles in the construction of a structural stormwater facility within the sub-watershed, a stormwater quality structural facility mitigation bank or a payment-in-lieu program.

- vi. A description of the inspection and enforcement response procedures the co-permittee will follow when addressing project compliance issues with the enforceable post-construction stormwater management performance standards.
- g. **Pollution Prevention for Municipal Operations:** The co-permittee must continue to implement a program to reduce the discharge of pollutants to the MS4 from properties owned or operated by the co-permittee for which the permittee has authority, including, but not limited to, parks and open spaces, fleet and building maintenance facilities, transportation systems and fire-fighting training facilities. The co-permittee must conduct, at a minimum, the following program activities:
 - i. Operate and maintain public streets, roads and highways in a manner designed to minimize the discharge of stormwater pollutants to the MS4, including pollutants discharged as a result of deicing activities;
 - ii. Implement a management program to control and minimize the use and application of pesticides, herbicides and fertilizers on co-permittee-owned properties;
 - iii. By January 1, 2013, inventory, assess, and implement a strategy to reduce the impact of stormwater runoff from municipal facilities that treat, store or transport municipal waste, such as yard waste or other municipal waste and are not already covered under a 1200 series NPDES, a DEQ solid waste, or other permit designed to reduce the discharge of pollutants;
 - iv. Limit infiltration of seepage from the municipal sanitary sewer system to the MS4;
 - v. Implement a strategy to prevent or control the release of materials related to fire-fighting training activities; and,
 - vi. Assess co-permittee flood control projects to identify potential impacts on the water quality of receiving water bodies and determine the feasibility of retrofitting structural flood control devices for additional stormwater pollutant removal. The results of this assessment must be incorporated and considered along with the results of the Stormwater Retrofit Assessment required by this permit.
- h. **Stormwater Management Facilities Operation and Maintenance Activities:**
 - i. By January 1, 2013, the co-permittee must inventory and map stormwater management facilities and controls, and implement a program to verify that stormwater management facilities and controls are inspected, operated and maintained for effective pollutant



removal, infiltration and flow control. At a minimum, the program must include the following:

- I.* Legal authority to inspect and require effective operation and maintenance;
 - 2.* A strategy to inventory and map public and private stormwater management facilities as provided under Schedule A.4.h.ii.; and,
 - 3.* Public and private stormwater facility inspection and maintenance requirements for stormwater management facilities that have been inventoried and mapped as provided under Schedule A.4.h.ii.
- ii.* As part of the Stormwater Management Facilities Inspection and Maintenance program, the co-permittee must implement a strategy that guides the long-term maintenance and management of all co-permittee-owned and identified privately-owned stormwater structural facilities. At a minimum, the strategy must describe the following:
- I.* Co-permittee-owned or operated stormwater management facilities
 - a.* Inventory and mapping process;
 - b.* Inspection and maintenance schedule;
 - c.* Inspection, operation and maintenance criteria and priorities;
 - d.* Description of inspector type and staff position or title; and,
 - e.* Inspection and maintenance tracking mechanisms.
 - 2.* Privately-owned or operated stormwater management facilities
 - a.* Procedures for and types of stormwater facilities that will be inventoried and mapped. At a minimum, the inventory and mapping must include the following:
 - i.* Private stormwater management facilities for new development and redevelopment projects constructed under the co-permittee's post-construction management manual or equivalent document after February 1, 2011.;
 - ii.* Private stormwater management facilities identified by the co-permittee and used to estimate the pollutant load reduction as part of the TMDL benchmark evaluation; and,
 - iii.* Any major private stormwater management facilities or structural controls.
 - b.* Inspection criteria, rationale, priorities, frequency and procedures for inspection of private stormwater facilities that have been inventoried and mapped;
 - c.* Required training or qualifications to inspect private stormwater facilities;
 - d.* Reporting requirements; and,



e. Inspection and maintenance tracking mechanism.

5. **Hydromodification Assessment:** The co-permittee must conduct an initial hydromodification assessment and submit a report by November 1, 2014 that examines the hydromodification impacts related to the co-permittee's MS4 discharges, including erosion, sedimentation, and alteration to stormwater flow, volume and duration that may cause or contribute to water quality degradation. The report shall describe existing efforts and proposed actions the co-permittee has identified to address the following objectives:
- a. Collect and maintain information that will inform future stormwater management decisions related to hydromodification based on local conditions and needs;
 - b. Identify or develop strategies to address hydromodification information or data gaps related to waterbodies within the co-permittee's jurisdiction;
 - c. Identify strategies and priorities for preventing or reducing hydromodification impacts related to the co-permittee's MS4 discharges; and,
 - d. Identify or develop effective tools to reduce hydromodification.
6. **Stormwater Retrofit Strategy Development:** The co-permittee must develop a stormwater quality retrofit strategy identified in a plan that applies to developed areas identified by the co-permittee as impacting water quality and that are underserved or lacking stormwater quality controls.
- a. The stormwater retrofit strategy must be based on a co-permittee-defined set of stormwater quality retrofit objectives and a comprehensive evaluation of a range of stormwater quality retrofit control measures and their appropriate use. The co-permittee-defined objectives must incorporate progress towards applicable TMDL wasteload allocations. Development of the stormwater retrofit strategy must allow for public comment and consider public input.
 - b. The co-permittee must develop and submit a stormwater retrofit plan to the Department by November 1, 2014 that the co-permittee will use to guide the implementation of its stormwater retrofit strategy. The stormwater retrofit plan must describe or reference the following:
 - i. Stormwater retrofit strategy statement and summary, including objectives and rationale;
 - ii. Summary of current stormwater retrofit control measures being implemented, and current estimate of annual program resources directed towards stormwater retrofits;
 - iii. Identification of developed areas or land uses impacting water quality that are high priority retrofit areas;
 - iv. Consideration of new stormwater control measures;

- v. Preferred retrofit structural control measures, including rationale;
 - vi. A retrofit control measure project or approach priority list, including rationale, identification and map of potential stormwater retrofit locations where appropriate, and an estimated timeline and cost for implementation of each project or approach.
- c. By November 1, 2013, each co-permittee must identify one stormwater quality improvement project, at a minimum, to be initiated, constructed or implemented during the permit term. The project must target the reduction of applicable TMDL pollutant parameters. The project must be associated with a Capital Improvement Project or other municipal retrofit project or strategy.
- 7. Implementation Schedule:** The following implementation schedule provides a summary of due dates for the new permit conditions identified in Schedule A.

PERMIT CONDITION	SUMMARY OF IMPLEMENTATION SCHEDULE ACTIVITIES	DUE DATE
Illicit Discharge Detection and Elimination – A.4.a.	1. Document enforcement response procedures	November 1, 2011
	2. Develop or identify pollutant parameter action levels	November 1, 2011
	3. Identify and map dry-weather screening priority locations	July 1, 2012
Industrial and Commercial Facilities – A.4.b	1. Implement industrial and commercial facility inspection and stormwater control program	January 1, 2013
Education and Outreach – A.4.d.	1. Conduct or participate in effectiveness evaluation	November 1, 2014
Post-Construction Site Runoff – A.4.f.	1. Implement updated post-construction site runoff program	January 1, 2014
Pollution Prevention for Municipal Operations – A.4.g.	1. Inventory and assess municipal operations	January 1, 2013
Structural Stormwater Controls Operation and Maintenance Activities – A.4.h.	1. Implement structural stormwater controls operation and maintenance program	January 1, 2013
Hydromodification Assessment – A.5.	1. Conduct hydromodification assessment and submit report	November 1, 2014
Stormwater Retrofit Strategy Development – A.6.	1. Develop stormwater retrofit strategy and submit stormwater retrofit plan	November 1, 2014
	2. Identify stormwater quality improvement project	November 1, 2013
	3. Construct or implement stormwater quality improvement project	Permit expiration date

SCHEDULE B

Monitoring and Reporting Requirements

1. **MONITORING PROGRAM** - Each co-permittee must continue to implement a monitoring program to support adaptive stormwater management and the evaluation of stormwater management program effectiveness in reducing the discharge of pollutants from the MS4.
 - a. The monitoring program must incorporate the following objectives:
 - i. Evaluate the source(s) of the 2004/2006 303(d) listed pollutants applicable to the co-permittee's permit area;
 - ii. Evaluate the effectiveness of Best Management Practices (BMPs) in order to help determine BMP implementation priorities;
 - iii. Characterize stormwater based on land use type, seasonality, geography or other catchment characteristics;
 - iv. Evaluate status and long-term trends in receiving waters associated with MS4 stormwater discharges;
 - v. Assess the chemical, biological, and physical effects of MS4 stormwater discharges on receiving waters; and,
 - vi. Assess progress towards meeting TMDL pollutant load reduction benchmarks.
 - b. The monitoring program must include environmental monitoring that incorporates the requirements identified in Table B-1. The requirements in Table B-1 become effective with the approval of the monitoring plan in accordance with Schedule B.2.d., and no later than July 1, 2011.



**Table B-1
Environmental Monitoring**

Monitoring Type	Monitoring Location(s)	Monitoring Frequency	Pollutant Parameter Analyte(s)
Instream Monitoring	Sixteen (16) sites; probabilistically selected; city-wide	Four (4) events/year	Field; Conventional; Metals; Nutrients
Continuous Instream Monitoring	Three (3) continuous monitoring stations	Ongoing	Temperature Flow
Stormwater Monitoring	Fifteen (15) sites; probabilistically selected; city-wide	Three (3) events/year	Field; Conventional; Metals; Nutrients
Stormwater Monitoring – Pesticide	Fifteen (15) sites; probabilistically selected; city-wide	Three (3) events/permit term	Pesticides
Stormwater Monitoring – Mercury	Two (2) sites	Two (2) events/year; one summer event and one winter event	Mercury
Macro-invertebrate Monitoring	Sixteen (16) sites; probabilistically selected; city-wide	One (1) event/year	N/A

Special Conditions:

- 1) The monitoring frequency reflects the required number of sample events per monitoring location.
- 2) Additional pesticide pollutant parameters that must be considered for purposes of stormwater monitoring – pesticide include any pesticides currently used by the co-permittees within their jurisdictional areas and the following: Insecticides: Bifenthrin, Cypermethrin or Permethrin, Imidacloprid, Fipronil, Malathion, Carbaryl; Herbicides: Triclopyr, 2,4-D, Glyphosate & degradate (AMPA), Trifluralin, Pendimethalin; and, Fungicides: Chlorothalonil, Propiconazole, Myclobutanil.
- 3) The Macroinvertebrate monitoring must follow a generally accepted macroinvertebrate monitoring methodology (e.g., DEQ Benthic Macroinvertebrate Protocol for Wadeable Rivers and Streams). The methodology must be documented in the monitoring plan.
- 4) BOD₅ are only required to be monitored in streams with an established TMDL.
- 5) Monitoring and analysis for mercury and methyl mercury must be conducted in accordance with DEQ's December 23, 2010 "Mercury Monitoring Requirements for Willamette Basin Permittees" memo. After two years of monitoring, the co-permittee may request in writing to the Department that the mercury and methyl mercury monitoring be eliminated. The monitoring may be eliminated only after written approval by the Department. EPA Method 1669 ultra clean sampling protocol must be used to collect samples. Monitoring for total and dissolved mercury must be performed according to USEPA method 1631E with a quantitation limit of 0.5 ng/L. Monitoring for total and dissolved methyl mercury must be performed according to USEPA method 1630 with a quantitation limit of 0.05 ng/L.

Pollutant parameter(s) identified in each analyte category in Table B-1 are as follows:

<u>Field</u>	<u>Conventional</u>	<u>Nutrients</u>	<u>Metals (Total Recoverable & Dissolved)</u>
Dissolved Oxygen pH Temperature Conductivity	<i>Escherichia coli</i> (E. coli) Hardness Total Organic Carbon (TOC) Total Suspended Solids (TSS)	Nitrate (NO ₃) Ammonia Nitrogen (NH ₃ -N) Total Phosphorus (TP) Ortho-Phosphorus (O-PO ₄)	Copper Lead Zinc
		<u>Mercury (Total & Dissolved)</u> Mercury Methyl Mercury	<u>Pesticides</u> 2,4-D Pentachlorophenol

2. **MONITORING PLAN** - The co-permittee must develop and implement an approved monitoring plan by July 1, 2011. Prior to submission of the monitoring plan to the Department, the co-permittee must provide an opportunity to receive comments from the public. The monitoring plan must be submitted to the Department for review no later than June 1, 2011, and incorporate the following elements:
- a. Identifies how each monitoring objective identified in Schedule B.1.a. is addressed and the sources of information used. The co-permittee may use Stormwater Management Plan measurable goals, environmental monitoring activities, historical monitoring data, stormwater modeling, national stormwater monitoring data, stormwater research or other applicable information to address the monitoring objectives.
 - b. Describes the role of the monitoring program in the adaptive management of the stormwater program.
 - c. Describes the relationship between environmental monitoring and a long-term monitoring program strategy.
 - d. Describes the following information for each environmental monitoring project/task:
 - i. Project/task organization
 - ii. Monitoring objectives, including:
 - a. Monitoring question and background;
 - b. Data analysis methodology and quality criteria; and
 - c. Assumptions and rationale;
 - iii. Documentation and record-keeping procedures;
 - iv. Monitoring process/study design, including monitoring location, description of sampling event or storm selection criteria, monitoring frequency and duration, and responsible sampling coordinator;
 - v. Sample collection methods and handling/custody procedures;
 - vi. Analytical methods for each water quality parameter to be analyzed;
 - vii. Quality control procedures, including quality assurance, the testing, inspection, maintenance, calibration of instrumentation and equipment; and
 - viii. Data management, review, validation and verification.
 - e. The monitoring plan may be modified without prior Department approval if the following conditions are met. For conditions not covered in this section, the co-permittee must provide the Department with a 30-day notice of the proposed modification to the monitoring plan, and receive written approval from the Department prior to implementation

of the proposed modification. If the Department does not respond to the permittee within 30 days, the permittee may proceed with implementation of the proposed modification without written approval.

- i. The co-permittee is unable to collect or analyze any sample, pollutant parameter, or information due to circumstances beyond the co-permittee's control. These circumstances may include, but are not limited to, abnormal climatic conditions, unsafe or impracticable sampling conditions, equipment vandalism or equipment failures that occur despite proper operations and maintenance; or,
 - ii. The modification does not reduce the minimum number of data points, which are a product of monitoring location, frequency, and length of permit term, or eliminate pollutant parameters identified in Table B-1.
- f. Modifications to the monitoring plan in accordance with Schedule B.2.e. must be documented in the subsequent annual report by describing the rationale for the modification, and how the modification will allow the monitoring program to remain compliant with the permit conditions.
3. **SAMPLING AND ANALYSIS** – The co-permittee must exercise due diligence in collecting and analyzing all environmental monitoring samples required by this permit. All monitoring must be conducted in accordance with design and procedures identified in Schedule B.2.d.
- a. In-stream monitoring
 - i. A minimum of 50 percent of the water quality sample events must be collected during the wet season (October 1 to April 30).
 - ii. Each unique sample event must occur at a minimum of 14 days apart.
 - b. Stormwater monitoring
 - i. All water quality samples must be collected during a storm event that is greater than 0.1 inch of rainfall.
 - ii. When possible, samples must be collected after an antecedent dry period of a minimum of 24 hours.
 - iii. The intra-event dry period must not exceed 6 hours, unless a 24-hr flow-weighted composite sample collection method is employed.
 - iv. Sample Collection Method: A flow-weighted composite sample must be collected during stormwater runoff producing events that represent the local or regional rainfall frequency and intensity, including event types that may be expected to yield high pollutant loads/concentrations.
 1. A time-composite sampling method or grab sampling method may be used for an environmental monitoring type, project or task, if the monitoring plan



identifies the infeasibility of the flow-weighted composite sampling method or flow-weighted composite sampling is scientifically unwarranted based upon the development of plan requirements identified in Schedule B.2.d. For time composite sampling or grab sampling to be considered valid for the purpose of this permit requirement, the rationale for the use of these alternative sampling methods and sampling procedures must be described in the monitoring plan.

2. The flow-weighted sampling method requirement is not applicable to the collection of samples for the pollutant parameters requiring the grab sampling method, such as bacteria, oil & grease, pH or volatiles or for samples collected for purposes of insecticide, herbicide and fungicide monitoring.

3. Grab samples may be collected during any part of a storm event which produces sufficient runoff for sampling. The grab samples must be collected in a manner to minimize any potential bias in the results.

- v. Flow or rainfall data must be collected, estimated or modeled for each stormwater monitoring event. If flow or rainfall is modeled or estimated, the procedure must be described in the monitoring plan.
 - c. Samples must be analyzed in accordance with EPA approved methods listed in the most recent publication of 40 CFR 136. Sample analysis for total and dissolved mercury and methyl mercury must adhere to the methods referenced in DEQ's December 23, 2010 "Mercury Monitoring Requirements for Willamette Basin Permittees" memo. The analysis must utilize appropriate Quality Assurance/Quality Control protocols, such as routinely analyzing replicates, blanks, laboratory control samples and spiked samples, and quantitation limits appropriate for the sampling objective. Field analytical kits are acceptable if the kits use a method approved under 40 CFR 136. This requirement does not apply to illicit detection and discharge elimination field screening activities conducted by the co-permittee as required by Schedule A.4.a.iv. Use of alternative test procedures must be done in accordance with 40 CFR 136.
 - d. If an approved analytical method is not identified in 40 CFR 136, the co-permittee may use a suitable analytical method if the method is described in the monitoring plan, and submitted to the Department for review and approval prior to use.
 - e. Analyzed samples must comply with preservation, transportation and holding time recommendations cited in 40 CFR 136, in the most recent edition of Standard Methods for the Examination of Water and Wastewater, a DEQ management directive, or as applicable to the analytical method if no approved analytical method in 40 CFR 136 or the most recent edition of Standard Methods for the Examination of Water and Wastewater exists.
 - f. Analytical data must be available to the Department in a useable electronic format.
4. COORDINATED MONITORING – Environmental monitoring conducted to meet a permit condition in Table B-1 may be coordinated among co-permittees or conducted on behalf of a co-

permittee by a third party. Each co-permittee is responsible for environmental monitoring in accordance with Schedule B requirements. The co-permittee may utilize data collected by another permittee, a third party, or in another co-permittee's jurisdiction to meet a permit condition in Table B-1 provided the co-permittee establishes an agreement prior to conducting coordinated environmental monitoring.

5. **ANNUAL REPORTING REQUIREMENT** – The co-permittee must submit, by November 1 of each year, an annual report for the time period July 1 of the previous year through June 30 of the same year. One printed copy and an electronic copy must be submitted to the appropriate Department regional office. An electronic copy must also be made available on the co-permittee's website and/or other similar method approved by the Department. Each co-permittee is responsible for the portion of the annual report applicable to its jurisdiction. Each annual report must contain:

- a. The status of implementing the stormwater management program and each SWMP program element, including progress in meeting the measurable goals identified in the SWMP.
- b. Status or results, or both, of any public education program effectiveness evaluation conducted during the reporting year and a summary of how the results were or will be used for adaptive management.
- c. A summary of the adaptive management process implementation during the reporting year, including any proposed changes to the stormwater management program (e.g., new BMPs) identified through implementation of the adaptive management process.
- d. Any proposed changes to SWMP program elements that are designed to reduce TMDL pollutants to the MEP.
- e. A summary of total stormwater program expenditures and funding sources over the reporting fiscal year, and those anticipated in the next fiscal year.
- f. A summary of monitoring program results, including monitoring data that are accumulated throughout the reporting year and any assessments or evaluations conducted.
- g. Any proposed modifications to the monitoring plan that are necessary to ensure that adequate data and information are collected to conduct stormwater program assessments.
- h. A summary describing the number and nature of enforcement actions, inspections, and public education programs, including results of ongoing field screening and follow-up activities related to illicit discharges.
- i. An overview, as related to MS4 discharges, of concept planning, land use changes and new development activities that occurred within the Urban Growth Boundary (UGB) expansion areas during the previous year, and those forecast for the following year, including the number of new post-construction permits issued, and an estimate of the total new and replaced impervious surface area related to new development redevelopment projects that

commenced during the reporting year.

- j. In addition to the elements listed under Schedule B.5.a. through B.5.i., the annual report submitted by November 1, 2014 must include:
 - i. The TMDL Pollutant Load Reduction Evaluation as described in Schedule D.3.c.
 - ii. The Wasteload Allocation Attainment Assessment as described in Schedule D.3.b.
 - iii. The 303(d) evaluation as described in Schedule D.2.
- 6. MS4 PERMIT RENEWAL APPLICATION PACKAGE - At least 180 days prior to permit expiration, the co-permittee must submit a permit renewal application package to support their proposed modifications to the SWMP for the renewed permit. One printed copy and an electronic copy must be submitted to the appropriate DEQ regional office. An electronic copy must also be made available on the co-permittee's website or other similar method approved by the Department. The application package must include an evaluation of the adequacy of the proposed SWMP modifications in reducing pollutants in discharges from the MS4 to the MEP. The application package must contain:
 - a. Proposed program modifications including the modification, addition or removal of BMPs incorporated into the SWMP, and associated measurable goals.
 - b. The information and analysis necessary to support the Department's independent assessment that the co-permittee's stormwater management program addressed the requirements of the existing permit. Co-permittees must also describe how the proposed management practices, control techniques, and other provisions implemented as part of the stormwater program were evaluated using a co-permittee-defined and standardized set of objective criteria relative to the following MEP general evaluation factors:
 - i. Effectiveness -- program elements effectively address stormwater pollutants.
 - ii. Local Applicability -- program elements are technically feasible considering local soils, geography, and other locale specific factors.
 - iii. Program Resources -- program elements are implemented considering availability to resources and the co-permittees stormwater management program priorities.
 - c. An updated estimate of total annual stormwater pollutant loads for applicable TMDL pollutants or applicable surrogate parameters, and the following pollutant parameters: BOD₅, COD, nitrate, total phosphorus, dissolved phosphorus, cadmium, copper, lead and zinc. The estimates must be accompanied by a description of the procedures for estimating pollutant loads and concentrations, including any modeling, data analysis and calculation methods.
 - d. A proposed monitoring program objectives matrix and proposed monitoring plan including the information required in Schedule B.2.d. for each proposed monitoring project/task.
 - e. A description of any service area expansions that are anticipated to occur during the following permit term and a finding as to whether or not the expansion is expected to result in a substantial increase in area, intensity or pollutant loads.



- f. A fiscal evaluation summarizing program expenditures for the current permit cycle and projected program allocations for next permit cycle.
- g. Updated MS4 maps, including the service boundary of the MS4, projected changes in land use and population densities, projected future growth, location of co-permittee-owned operations, facilities, or properties with storm sewer systems, and the location of facilities issued an industrial NPDES permit that discharge to the MS4.
- h. If applicable, the established TMDL pollutant load reduction benchmarks, as required in Schedule D.3.d.



SCHEDULE C

Compliance Conditions and Dates

Compliance conditions and dates are not included at this time.

SCHEDULE D

Special Conditions

1. Legal Authority

Each co-permittee must maintain adequate legal authority through ordinance(s), interagency agreement(s) or other means to implement and enforce the provisions of this permit.

2. 303(d) Listed Pollutants

- a. The requirements of this section apply to receiving waters listed as impaired on the 303(d) list without established TMDL waste load allocations to which the co-permittee's MS4 discharges. The co-permittee must:
 - i. Review the applicable pollutants that are on the 2004/2006 303(d) list, or the most recent USEPA list if approved within three years of the issuance date of this permit, that are relevant to the co-permittee's MS4 discharges by November 1, 2014. Based on a review of the most current 303(d) list, evaluate whether there is a reasonable likelihood for stormwater from the MS4 to cause or contribute to water quality degradation of receiving waters.
 - ii. Evaluate whether the BMPs in the existing SWMP are effective in reducing the 303(d) pollutants. If the co-permittee determines that the BMPs in the existing SWMP are ineffective in reducing the applicable 303 (d) pollutants, the co-permittee must describe how the SWMP will be modified or updated to address and reduce these pollutants to the MEP.
 - iii. By November 1, 2014, submit a report summarizing the results of the review and evaluation, and that identifies any proposed modifications or updates to the SWMP that are necessary to reduce applicable 303(d) pollutants to the MEP.

3. Total Maximum Daily Loads (TMDLs)

- a. **Applicability:** The requirements of this section apply to the co-permittee's MS4 discharges to receiving waters with established TMDLs or to receiving waters with new or modified TMDLs approved by EPA within three years of the issuance date of this permit. Established TMDLs are noted on page 1 of this permit. Pollutant discharges for those parameters listed in the TMDL with applicable wasteload allocations (WLAs) must be reduced to the maximum extent practicable through the implementation of BMPs and an adaptive management process.
- b. **Wasteload Allocation Attainment Assessment:** The co-permittee must complete an assessment of WLA attainment, including identifying information related to the type and extent of BMPs necessary to achieve pollutant load reductions associated with an established TMDL WLA and the financial costs and other resources that may be associated with the implementation, operation and maintenance of BMPs. The results of the assessment must be



submitted to the Department by November 1, 2014.

- c. TMDL Pollutant Load Reduction Evaluation: Progress towards reducing TMDL pollutant loads must be evaluated by the co-permittee through the use of a pollutant load reduction empirical model, water quality status and trend analysis, and other appropriate qualitative or quantitative evaluation approaches identified by the co-permittee. The results of this TMDL pollutant load reduction evaluation must be described in a report and submitted to the Department by November 1, 2014. The report must contain the following:
- i. The rationale and methodology used to evaluate progress towards reducing TMDL pollutant loads.
 - ii. An estimate of current pollutant loadings without considering BMP implementation, and an estimate of current pollutant loadings considering BMP implementation for each TMDL parameter with an established WLA. The difference between these two estimated loads is the pollutant load reduction.
 - iii. A comparison of the estimated pollutant loading with and without BMP implementation to the applicable TMDL WLA.
 - iv. A comparison of the estimated pollutant load reduction to the estimated TMDL pollutant load reduction benchmark established for the permit term, if applicable.
 - v. A description of the estimated effectiveness of structural BMPs.
 - vi. A description of the estimated effectiveness of non-structural BMPs, if applicable, and the rationale for the selected approach.
 - vii. A water quality trend analysis, as sufficient data are available, and the relationship to stormwater discharges for receiving waterbodies within the co-permittee's jurisdictional area with an approved TMDL. If sufficient data to conduct a water quality trend analysis is unavailable for a receiving waterbody, the co-permittee must describe the data limitations. The collection of sufficient data must be prioritized and reflected as part of the monitoring project/task proposal required in Schedule B.6.d.
 - viii. A narrative summarizing progress towards the applicable TMDL WLAs and existing TMDL benchmarks, if applicable. If the co-permittee estimates that an existing TMDL benchmark was not achieved during the permit term, the co-permittee must apply their adaptive management process to reassess the SWMP and current BMP implementation in order to address TMDL pollutant load reduction over the next permit term. The results of this reassessment must be submitted with the permit renewal application package described in Schedule B.6.; and,
 - ix. If the co-permittee estimates that TMDL WLAs are achieved with existing BMP implementation, the co-permittee must provide a statement supporting this conclusion.
- d. Establishment of TMDL Pollutant Reduction Benchmarks: A TMDL pollutant reduction benchmark must be developed for each applicable TMDL parameter where existing BMP implementation is not achieving the WLA. An updated TMDL pollutant reduction benchmark must be submitted with the permit renewal application at least 180 days prior to expiration of this permit, as follows:
- i. The TMDL pollutant load reduction benchmark must reflect:
 - 1. Additional pollutant load reduction necessary to achieve the benchmark estimated for



- the current permit term, if not achieved per Schedule D.3.c.iv.; and,
2. The pollutant load reduction proposed to achieve additional progress towards the TMDL WLA during the next permit term.

- ii. The TMDL pollutant load reduction benchmark submittal must include the following:
 1. An explanation of the relationship between the TMDL wasteload allocations and the TMDL benchmark for each applicable TMDL parameter;
 2. A description of how SWMP implementation contributes to the overall reduction of the TMDL pollutants during the next permit term;
 3. Identification of additional or modified BMPs that will result in further reductions in the discharge of the applicable TMDL pollutants, including the rationale for proposing the BMPs; and,
 4. An estimate of current pollutant loadings that reflect the implementation of the current BMPs and the BMPs proposed to be implemented during the next permit term.

4. Adaptive Management

Each co-permittee must follow an adaptive management approach to assess annually and modify, as necessary, any or all existing SWMP components and adopt new or revised SWMP components to achieve reductions in stormwater pollutants to the MEP. The adaptive management approach must include routine assessment of the need to further improve water quality and protection of beneficial uses, review of available technologies and practices, review of monitoring data and analyses required in Schedule B, review of measurable goals and tracking measures, and evaluation of resources available to implement the technologies and practices. The co-permittee must submit a description of the process for conducting this adaptive management approach during the permit term by November 1, 2011.

5. SWMP Revisions

The co-permittee may revise their SWMP during the permit term in accordance with the following procedures:

- i. Adding BMPs, controls or requirements to the SWMP may be made at any time. The co-permittee must provide notification to the Department prior to implementation, and submit a summary of such revisions to the Department in the subsequent annual report.
- ii. Reducing, replacing or eliminating BMP components, controls or requirements from the SWMP require submittal of a written request to the Department at least 60 days prior to the planned reduction, replacement, and/or elimination. The co-permittee's request must provide information that will allow the Department to determine within 60 days if the nature or scope of the SWMP is substantially changed, and include the following:
 1. Proposed reduction, replacement or elimination of the BMP(s), control, or requirement and schedule for implementation.
 2. An explanation of the need for the replacement, reduction or elimination.
 3. An explanation of how the replacement or reduction is expected to better achieve the goals of the stormwater management program or how the elimination is a result of the satisfactory completion of the BMP component, control or requirement.



- iii. The co-permittee must not implement a reduction, replacement or elimination of a BMP until approved by the Department. If a request is denied, the Department must send the co-permittee a written response providing a reason for the decision.
- iv. Adding, reducing, replacing or eliminating BMPs in the SWMP are considered permit revisions, and such revisions are minor or major permit modifications. Revisions that substantially change the nature and scope of the BMP component, control or requirement will be considered a major permit modification. Revisions requested by the permittee or initiated by the Department will be made in accordance with 40 CFR §§124.5, 122.62, or 122.63, and OAR 340-045-0040 and 0055.
- v. Revisions initiated by the Department will be made in writing, set forth the time schedule for the co-permittee to develop the revisions, and offer the co-permittee the opportunity to propose alternatives to meet the objective of the requested revisions.

6. SWMP Measurable Goals

The following conditions must be incorporated into the City of Portland SWMP by April 1, 2011:

- a. **BMP PI-1 Task 8:** By January 1, 2012, reconvene the Stormwater Advisory Committee to advise general stormwater management policy and implementation issues or effectively replace with another stormwater-related advisory committee that may be more narrowly focused.
- b. **BMP OM-1 Task 1:** Amend to include the following: Inspect all public stormwater management facilities once annually. This amendment will replace the first bullet point under OM-1measurable goals.
- c. **BMP OM-1 Task 3:** Amend to include the following: Enter all newly constructed public stormwater system components into an inspection and maintenance database within six (6) months of the completion of construction.
- d. **BMP OM-1 Task 6:** Amend to include the following: Complete and implement the materials management section of the Portland Bureau of Transportation (PBOT) training guide by January 1, 2012. Complete and implement the remainder of the PBOT training guide by January 1, 2015.
- e. **BMP OM-2 Task 6:** Implement a Street Leaf Removal Program in designated leaf removal districts. Residential streets may be swept between 3-6 times per year in these areas as an alternative to implementing the Leaf Removal Program.
- f. **BMP OM-3 Task 2:** Replace the second sentence to include the following: By January 1, 2013, identify, evaluate, and prioritize stormwater pollution prevention opportunities and improvements (e.g., improved materials storage, use, or transportation) to reduce potential impacts at properties owned or operated by the City of Portland.
- g. **BMP OM-3 Task 4:** Amend to include the following: Annually conduct a minimum of one formal education and outreach activity with each volunteer group that assists with maintaining Pesticide-Free Parks. Pesticide-free parks management must be maintained at a minimum of three (3) parks.
- h. **BMP IND-1 Task 4:** Amend to include the following: Beginning January 1, 2013, annually conduct an industrial facilities inspection "sweep" in at least one targeted area.
- i. **BMP IND-2 Task 6:** Amend to include the following: Conduct a minimum of one targeted



stormwater education and outreach activity with each of the following groups: Portland Community College, Association of Car Washers, International Society of Arborists (ISA local chapter), and Oregon Association of Nurseryman (OAN).

- j. **BMP IND-2 Task 7:** Amend to include the following: Evaluate one new business sector for implementation of the Eco-Logical Business Program by January 1, 2013. This amendment will replace the second bullet point under IND-2 measurable goals.
- k. **BMP ND-1 Task 7:** Conduct and document erosion control checks during each routine building permit inspection for land disturbing activities at construction sites requiring a City of Portland permit (e.g., grading and clearing, electrical, mechanical, plumbing).

The following conditions must be incorporated into the Port of Portland SWMP by April 1, 2011:

- l. **BMP Table 7-2 Implement an Inspection Program for Pollutant Source Areas Task 2:** Ensure implementation of appropriate control measures to minimize pollutant loading from priority facilities in an expeditious manner.
- m. **BMP Table 7-7 Limit Landscape Maintenance Activities Impact on Stormwater Task 2:** Annually review the Port's program to control pesticides, herbicides and fertilizers, and update as appropriate.
- n. **BMP Table 7-8 Implement a Program for the Tracking and Maintenance of Private Structural Controls Task 1:** Develop an inventory and mechanism for tracking private structural controls on tenant properties by December 31, 2012.

7. Implementation Schedule

The following implementation schedule provides a summary of due dates for the permit conditions identified in Schedule B & Schedule D.

PERMIT CONDITION	SUMMARY OF IMPLEMENTATION SCHEDULE ACTIVITIES	DUE DATE
Monitoring Plan and Environmental Monitoring – B.1.b, B.2 & Table B-1	1. Submit monitoring plan	June 1, 2011
	2. Implement an approved monitoring plan	July 1, 2011
Annual Report – B.5	1. Submit annual report	November 1 - annually
Permit Renewal Application Package – B.6	1. Submit permit renewal package	180 days prior to permit expiration

303(d) List Evaluation – D.2	1. Submit 303(d) list evaluation report	November 1, 2014
Total Maximum Daily Load (TMDL) – D.3	1. Submit Wasteload Allocation Attainment Assessment	November 1, 2014
	2. Submit TMDL Pollutant Load Reduction Evaluation	November 1, 2014
	3. Submit TMDL Pollutant Load Reduction Benchmark	180 days prior to permit expiration
Adaptive Management – D.4	1. Submit Adaptive Management Approach	November 1, 2011
SWMP Measurable Goals – D.6	1. Incorporate SWMP Measurable Goal conditions	April 1, 2011

Definitions:

- a. **Adaptive Management:** A structured, iterative process designed to refine and improve stormwater programs over time by evaluating results and adjusting actions on the basis of what has been learned.
- b. **Antecedent dry period:** The period of dry time between precipitation events greater than 0.1 inch of precipitation.
- c. **Best Management Practices (BMPs):** The schedule of activities, controls, prohibition of practices, maintenance procedures and other management practices designed to prevent or reduce pollution. BMPs also include treatment requirements, operating procedures and practices to control stormwater runoff.
- d. **Dry-weather field screening pollutant parameter action levels:** Pollutant concentrations or concentration ranges used by a co-permittee to identify an illicit discharge may be present and further investigation is needed.
- e. **Green Infrastructure (GI):** A comprehensive approach to water quality protection defined by a range of natural and built systems and practices that use or mimic natural hydrologic processes to infiltrate, evapotranspire, or reuse stormwater runoff on the site where the runoff is generated.
- f. **Illicit Discharge:** Any discharge to a municipal separate storm sewer system that is not composed entirely of stormwater except discharges authorized under Section A.4.a.xii., discharges permitted by a NPDES permit or other state or federal permit, or otherwise authorized by the Department.
- g. **Impervious Surface:** Any surface resulting from development activities that prevents the infiltration of water or results in more runoff than in the undeveloped condition. Common impervious surfaces include: building roofs, traditional concrete or asphalt paving on walkways, driveways, parking lots, gravel roads, and packed earthen materials.
- h. **Low Impact Development (LID):** A stormwater management approach that seeks to mitigate the impacts of increased runoff and stormwater pollution using a set of planning,

design and construction approaches and stormwater management practices that promote the use of natural systems for infiltration, evapotranspiration, and reuse of rainwater, and can occur at a wide range of landscape scales (i.e., regional, community and site).

- i. **Maximum Extent Practicable (MEP):** The statutory standard that establishes the level of pollutant reductions that operators of regulated MS4s must achieve. This standard is considered met if the conditions of the permit are met.
- j. **Measurable Goals:** BMP objectives or targets used to identify progress of SWMP implementation. Measurable goals are prospective and, wherever possible, quantitative. Measurable goals describe *what* the co-permittee intends to do and *when* they intend to do it.
- k. **Redevelopment:** A project on a previously developed site that results in the addition or replacement of impervious surface.
- l. **Replace or Replacement:** The removal of an impervious surface that exposes soil followed by the placement of an impervious surface. Replacement does not include repair or maintenance activities on structures or facilities taken to prevent decline, lapse or cessation in the use of the existing impervious surface as long as no additional hydrologic impact results from the repair or maintenance activity.
- m. **Stormwater Management Program:** A comprehensive set of activities and actions, including policies, procedures, standards, ordinances, criteria, and best management practices established to reduce the discharge of pollutants from the Municipal Separate Storm Sewer System to the Maximum Extent Practicable, to protect water quality, and to satisfy the appropriate water quality requirements of the Clean Water Act.
- n. **Time of Concentration:** Travel time for a drop of water to travel from most hydrologically remote location in a defined catchment to the outlet for that catchment where remoteness relates to time of travel rather than distance.
- o. **TMDL Pollutant Load Reduction Benchmark (TMDL benchmark):** An estimated total pollutant load reduction target for each parameter or surrogate, where applicable, for waste load allocations established under an EPA-approved TMDL. A benchmark is the anticipated pollutant load reduction goal to be achieved during the permit cycle through the implementation of the stormwater management program and BMPs identified in the SWMP. A benchmark is used to measure the effectiveness of the stormwater management program in making progress toward the waste load allocation, and is a tool for guiding adaptive management. A benchmark is not a numeric effluent limit; rather it is an estimated pollutant reduction target that is subject to the maximum extent practicable standard. Benchmarks may be stated as a pollutant load range based upon the results of a pollutant reduction empirical model.
- p. **Water Quality Trend Analysis:** A statistical analysis of in-stream water quality data to identify improvement or deterioration.

- q. **Waters of the State:** Lakes, bays, ponds, impounding reservoirs, springs, wells, rivers, streams, creeks, estuaries, marshes, inlets, canals, the Pacific Ocean within the territorial limits of the State of Oregon, and all other bodies of surface or underground waters, natural or artificial, inland or coastal, fresh or salt, public or private (except those private waters that do not combine or effect a junction with natural surface or underground waters) that are located wholly or partially within or bordering the state or within its jurisdiction.



SCHEDULE F

NPDES Permit General Conditions for Municipal Separate Storm Sewer Systems

SECTION A. STANDARD CONDITIONS

1. Duty to Comply with Permit

The co-permittees must comply with all conditions of this permit. Failure to comply with any permit condition is a violation of the Clean Water Act and Oregon Revised Statutes (ORS) 468B.025, and 40 Code of Federal Regulations (CFR) §122.41(a), and grounds for an enforcement action. Failure to comply is also grounds for the Department to modify, revoke, or deny renewal of a permit.

2. Penalties for Water Pollution and Permit Condition Violations

- a. ORS 468.140 allows the Department to impose civil penalties up to \$10,000 per day for violation of a term, condition, or requirement of a permit. Additionally 40 CFR §122.41(a) provides that any person who violates any permit condition, term, or requirement may be subject to a federal civil penalty not to exceed \$32,500 per day for each violation.
- b. Under ORS 468.943 and 40 CFR §122.41(a), unlawful water pollution, if committed by a person with criminal negligence, is punishable by a fine of up to \$25,000 imprisonment for not more than one year, or both. Each day on which a violation occurs or continues is a separately punishable offense.
- c. Under ORS 468.946, a person who knowingly discharges, places, or causes to be placed any waste into the waters of the state or in a location where the waste is likely to escape or be carried into the waters of the state is subject to a Class B felony punishable by a fine not to exceed \$200,000 and up to 10 years in prison. Additionally, under 40 CFR §122.41(a) any person who knowingly discharges, places, or causes to be placed any waste into the waters of the state or in a location where the waste is likely to escape into the waters of the state is subject to a federal civil penalty not to exceed \$100,000, and up to 6 years in prison.

3. Duty to Mitigate

The co-permittees must take all reasonable steps to minimize or prevent any discharge or sludge use or disposal in violation of this permit that has a reasonable likelihood of adversely affecting human health or the environment. In addition, upon request of the Department, the permittee must correct any adverse impact on the environment or human health resulting from noncompliance with this permit, including such accelerated or additional monitoring as necessary to determine the nature and impact of the non-complying discharge.

4. Duty to Reapply

If any or all of the co-permittees wish to continue an activity regulated by this permit after the expiration date of this permit, the co-permittee must apply to have the permit renewed. The application must be submitted at least 180 days before the expiration date of this permit.

The Department may grant permission to submit an application less than 180 days in advance but no later than the permit expiration date.



5. Permit Actions

This permit may be modified, revoked and reissued, or terminated for cause including, but not limited to, the following:

- a. Violation of any term, condition, or requirement of this permit, a rule, or a statute
- b. Obtaining this permit by misrepresentation or failure to disclose fully all material facts
- c. A change in any condition that requires either a temporary or permanent reduction or elimination of the authorized discharge
- d. The permittee is identified as a Designated Management Agency or allocated a waste load under a Total Maximum Daily Load (TMDL)
- e. New information or regulations
- f. Modification of compliance schedules
- g. Requirements of permit reopener conditions
- h. Correction of technical mistakes made in determining permit conditions
- i. Determination that the permitted activity endangers human health or the environment
- j. Other causes as specified in 40 CFR §§122.62, 122.64, and 124.5

The filing of a request by the co-permittee for a permit modification, revocation or reissuance, termination, or a notification of planned changes or anticipated noncompliance, does not stay any permit condition. The permittee must comply with all terms, conditions of the permit pending approval.

6. Toxic Pollutants

The co-permittee must comply with any applicable effluent standards or prohibitions established under Oregon Administrative Rules (OAR) 340-041-0033 for toxic pollutants within the time provided in the regulations that establish those standards or prohibitions, even if the permit has not yet been modified to incorporate the requirement.

7. Property Rights and Other Legal Requirements

The issuance of this permit does not convey any property rights of any sort, or any exclusive privilege, or authorize any injury to persons or property or invasion of any other private rights, or any infringement of federal, tribal, state, or local laws or regulations.

8. Permit References

Except for effluent standards or prohibitions established under OAR 340-041-0033 for toxic pollutants and standards for sewage sludge use or disposal established under Section 405(d) of the Clean Water Act, all rules and statutes referred to in this permit are those in effect on the date this permit is issued.

9. Permit Fees

The co-permittee must pay the fees required by OAR 340-045-0070 to 0075.

The co-permittee must pay annual compliance fees by the last day of the month prior to when the permit was issued. For example, if the permit was issued or last renewed in April, the due date will be March 31st. If the payment of annual fees is 30 days or more past due, the permit registrant must pay 9% interest per annum on the unpaid balance. Interest will accrue until the fees are paid in full. If the Department does not receive payment of annual fees when they are



due, the Department will refer the account to the Department of Revenue or to a private collection agency for collection.

SECTION B. OPERATION AND MAINTENANCE OF POLLUTION CONTROLS

1. Proper Operation and Maintenance

The co-permittee must at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) that are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems that are installed by the permittees only when the operation is necessary to achieve compliance with the conditions of the permit.

2. Need to Halt or Reduce Activity Not a Defense

It must not be a defense for the permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with this permit.

3. Removed Substances

Solids or other pollutants removed in the course of maintaining the MS4 must be disposed of in such a manner as to prevent any pollutant from such materials from entering waters of the state, causing nuisance conditions, or creating a public health hazard.

SECTION C. MONITORING AND RECORDS

1. Representative Sampling

Sampling and measurements taken as required under this Permit must be representative of the volume and nature of the monitored discharge. All samples must be taken at the monitoring points specified in this permit, and must be taken, unless otherwise specified, before the effluent joins or is diluted by any other waste stream, body of water, or substance. Monitoring points may not be changed without notification to and the approval of the Department.

2. Monitoring Procedures

Monitoring must be conducted according to test procedures approved under 40 CFR part 136, unless other test procedures have been specified in this permit or subsequent permit actions.

3. Penalties of Tampering

The Clean Water Act provides that any person who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this permit may, upon conviction, be punished by a fine of not more than \$10,000 per violation, imprisonment for not more than two years, or both. If a conviction of a person is for a violation committed after a first conviction of such person, punishment is a fine not more than \$20,000 per day of violation, or by imprisonment of not more than four years, or both.

4. Additional Monitoring by the Co-permittees



If the co-permittees monitor any pollutant more frequently than required by this permit, using test procedures approved under 40 CFR part 136 or as specified in this permit, the results of this monitoring must be included in the calculation and reporting of the data submitted in annual reports required by Schedule B. Such increased frequency must also be indicated.

5. Retention of Records

The co-permittees must retain records of all monitoring information, including: all calibration, maintenance records, all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the application for this permit for a period of at least 3 years from the date of the sample, measurement, report, or application. This period may be extended by request of the Department at any time.

6. Records Contents

Records of monitoring information must include:

- a. The date, exact place, time, and methods of sampling or measurements;
- b. The individual(s) who performed the sampling or measurements;
- c. The date(s) analyses were performed;
- d. The individual(s) who performed the analyses;
- e. The analytical techniques or methods used; and
- f. The results of such analyses.

7. Inspection and Entry

The co-permittees must allow the Department representative upon the presentation of credentials to:

- a. Enter upon a co-permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit;
- b. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;
- c. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit, and
- d. Sample or monitor at reasonable times, for the purpose of assuring permit compliance or as otherwise authorized by state law, any substances or parameters at any location within the MS4.

SECTION D. REPORTING REQUIREMENTS

1. Planned Changes

The permittee must comply with OAR chapter 340, division 52, "Review of Plans and Specifications" and 40 CFR §122.41(l)(l). Except where exempted under OAR chapter 340, division 52, no construction, installation, or modification involving disposal systems, treatment works, sewerage systems, or common sewers may be commenced until the plans and specifications are submitted to and approved by the Department. The permittee must give notice to the Department as soon as possible of any planned physical alterations or additions to the permitted facility.

2. Anticipated Noncompliance

The co-permittees must give advance notice to the Department of any planned changes in the permitted facility or activities that may result in noncompliance with permit requirements.

3. Transfers

This permit may be transferred to a new co-permittee(s) provided the transferee(s) acquires a property interest in the permitted activity and agrees in writing to fully comply with all the terms and conditions of the permit and the rules of the Commission. No permit may be transferred to a third party without prior written approval from the Department. The Department may require modification, revocation, and reissuance of the permit to change the name of the permittee and incorporate such other requirements as may be necessary under the Clean Water Act (see 40 CFR §122.61; in some cases, modification or revocation and reissuance is mandatory). The co-permittees must notify the Department when a transfer of property interest takes place that results in a change of co-permittee(s).

4. Compliance Schedule

Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of this permit must be submitted no later than 14 days following each schedule date. Any reports of noncompliance must include the cause of noncompliance, any remedial actions taken, and the probability of meeting the next scheduled requirements.

5. Duty to Provide Information

The co-permittees must furnish to the Department within a reasonable time any information that the Department requests to determine compliance with this permit. The co-permittees must also furnish to the Department, upon request, copies of records required to be kept by this permit.

Other Information: When a co-permittee becomes aware that it has failed to submit any relevant facts or has submitted incorrect information in a permit application or any report to the Department, it must promptly submit such facts or information.

6. Signatory Requirements

All applications, reports or information submitted to the Department must be signed and certified in accordance with 40 CFR §122.22.

7. Falsification of Information

Under ORS 468.953, any person who knowingly makes any false statement, representation, or certification in any record or other document submitted or required to be maintained under this permit, including monitoring reports or reports of compliance or noncompliance, is subject to a Class C felony punishable by a fine not to exceed \$100,000 per violation and up to 5 years in prison. Additionally, according to 40 CFR §122.41(k)(2), any person who knowingly makes any false statement, representation, or certification in any record or other document submitted or required to be maintained under this permit including monitoring reports or reports of compliance or non-compliance must, upon conviction, be punished by a federal civil penalty not to exceed \$10,000 per violation, or by imprisonment for not more than 6 months per violation, or by both.



SECTION E. DEFINITIONS

1. *CFR* means Code of Federal Regulations.
2. *Clean Water Act* or *CWA* means the Federal Water Pollution Control Act enacted by Public Law 92-500, as amended by Public Laws 95-217, 95-576, 96-483 and 97-117; 33 U.S.C. 1251 et seq.
3. *Department* means Department of Environmental Quality.
4. *Director* means Director of the Department of Environmental Quality.
5. *Flow-Weighted Composite Sample* means a sample formed by collection and mixing discrete samples taken periodically and based on flow.
6. *Grab Sample* means an individual discrete sample collected over a period of time not to exceed 15 minutes.
7. *Illicit Discharges* means any discharge to a municipal separate storm sewer that is not composed entirely of stormwater except discharges pursuant to a NPDES permit (other than the NPDES permit for discharges from the municipal separate storm sewer) and discharges resulting from fire fighting activities.
8. *Major Outfall* means a municipal separate storm sewer outfall that discharges from a single pipe with an inside diameter 36 inches or more or its equivalent (discharge from a single conveyance other than circular pipe which is associated with a drainage area of more than 50 acres); or for municipal separate storm sewers that receive stormwater from lands zoned for industrial activities (based on comprehensive zoning plans or the equivalent), an outfall that discharges from a single pipe with an inside diameter of 12 inches or more or from its equivalent (discharge from other than a circular pipe associated with a drainage area of 2 acres or more).
9. *mg/L* means milligrams per liter.
10. *mL/L* means milliliters per liter.
11. *MS4* means a municipal separate storm sewer system.
12. *Municipal Separate Storm Sewer (MS4)* means a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, manmade channels, or storm drains):
 - a. Owned or operated by a State, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to State Law) having jurisdiction over disposal of sewage, industrial wastes, stormwater or other wastes, including special districts under State Law such as a sewer district, flood control district or drainage district, or similar entity, or an Indian tribe or an authorized Indian Tribal organization, or a designated and approved management agency under §208 of the CWA that discharges to waters of the United States;
 - b. Designed or used for collection or conveying stormwater;
 - c. Which is not a combined sewer; and
 - d. Which is not part of a Publicly Owned Treatment Works (POTW) as defined by 40 CFR §122.2.
13. *Outfall* means a point source as defined by 40 CFR §122.2 at the point where a municipal separate storm sewer discharges to waters of the United States and does not include open conveyances connecting two municipal separate storm sewers, or pipes, tunnels or other conveyances which connect segments of the same stream or other waters of the United States and are used to convey waters of the United States.
14. *Permit* means the NPDES municipal separate storm sewer system (MS4) permit specified herein, authorizing the permittees listed on Page 1 of this permit to discharge from the MS4.
15. *Stormwater* means stormwater runoff, snowmelt runoff, and surface runoff and drainage.
16. *Year* means calendar year except where otherwise defined.

